

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

THE NORTHERN CHEYENNE TRIBE,  
Plaintiff,

vs.

THE UNITED STATES OF AMERICA;  
the UNITED STATES DEPARTMENT  
OF THE INTERIOR; the BUREAU OF  
INDIAN AFFAIRS; David  
BERNHARDT, in his official capacity as  
Secretary of the Interior; Darryl  
LACOUNTE, in his official capacity as  
Director of the Bureau of Indian Affairs;  
Susan MESSERLY, in her official  
capacity as Director of the BIA Rocky  
Mountain Regional Office; Lenora  
NIOCE, in her official capacity as BIA  
Special Agent in Charge/Approving  
Official;

Defendants.

No. CV-20-183-BLG-SPW

**COMPLAINT**

Plaintiff, by and through the undersigned attorneys, for its Complaint against  
the Defendants, hereby alleges as follows:

## INTRODUCTION

1. This is an action by Plaintiff, the Northern Cheyenne Tribe (“Tribe”), seeking declaratory, mandamus, injunctive and equitable relief against the United States of America (“United States” or “Government”) due to the Bureau of Indian Affairs’ violation of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 *et seq.* (“ISDEAA”) and its implementing regulations at 25 C.F.R. Part 900.

2. Defendants violated the ISDEAA when they declined to enter into a self-determination contract with Plaintiff that would allow Plaintiff to assume operation of the Bureau of Indian Affairs’ Criminal Investigation functions within Plaintiff’s Reservation.

3. Defendants improperly imposed non-regulatory requirements on Plaintiff as a condition of entering into a contract with Plaintiff, failed to adequately support the decision to decline Plaintiff’s contract proposal, and failed to provide technical assistance to Plaintiff, all in contravention of the ISDEAA and its implementing regulations.

4. Plaintiff seeks a declaration by this Court that Defendants violated the ISDEAA and an injunction ordering Defendants to accept Plaintiff's proposed contract, as well as its pre-award costs and other equitable relief.

#### PARTIES

5. Plaintiff is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 48 Stat. 987 (codified at 25 U.S.C. § 5123). The Tribe adopted a Constitution in 1935, which established its Tribal Council as its governing body. The Constitution and associated Bylaws were approved by the United States Assistant Secretary of the Interior on November 23, 1935. The Tribe amended its Constitution and Bylaws in 1960 and again in 1996, both of which were approved by the Bureau of Indian Affairs. Accordingly, the Tribe possesses all legal rights afforded to federally recognized Indian tribes including the right to enter into self-determination contracts under 25 U.S.C. §§ 5321(a)(1) and 5304(e).

6. The Tribe governs and occupies the Northern Cheyenne Reservation in Montana.

7. Defendant United States, acting by and through the Department of the Interior and the Bureau of Indian Affairs, as a matter of federal statutory, regulatory,

and common law, is trustee and a fiduciary to the Northern Cheyenne Tribe and is charged with carrying out trust and statutory duties and responsibilities to provide law and order within the Tribe's Reservation.

8. Defendant United States Department of Interior ("DOI") is an executive department of the United States Government organized and existing under 5 U.S.C. § 101, as amended. Defendant DOI is responsible for, among other things, entering into self-determination contracts with Indian tribes to administer DOI's programs, functions, services and activities under 25 U.S.C. § 5321 and the supervision, management, direction, and oversight of Defendant Bureau of Indian Affairs, which is a federal agency subsidiary of the DOI, pursuant to the provisions of 43 U.S.C. § 1457(10).

9. Defendant Bureau of Indian Affairs ("BIA" or "Bureau") is a subsidiary bureau within DOI. Defendant BIA is responsible for administering federal Indian policy; fulfilling its federal trust responsibilities to American Indians, tribal governments, and Alaska Natives; and promoting tribal self-determination and self-governance.

10. Defendant David Bernhardt, or his successor, is the Secretary of the Department of Interior of the United States of America (the "Secretary") and is

being sued in his official capacity as an officer and agent of the United States Government. The Secretary, as head of an executive department, reports directly to the President of the United States, *see* 43 U.S.C. § 1451, and is responsible for directing and supervising all operations and activities of DOI, including entering into self-determination contracts with tribes under 25 U.S.C. §§ 5321 and 5304(i).

11. Defendant Darryl LaCounte, or his successor, is the Director of the Bureau of Indian Affairs. As Director, he provides direction and coordination of the Bureau's responsibilities in the implementation of the ISDEAA. Indian Affairs Manual, Part 13, Ch.2, § 1.5.A.

12. Defendant Susan Messerly, or her successor, is the Regional Director of the Bureau's Rocky Mountain Regional Office. As Regional Director, she provides for the application of overall policies, procedures and implementation of self-determination services awards within her administrative jurisdictional area pursuant to governing statutes and established policies and procedures, and is responsible for providing technical assistance to tribes. Indian Affairs Manual, Part 13, Ch.2, § 1.5.D.

13. Defendant Lenora Nioce or her successor is a Special Agent in Charge within the Bureau's Office of Justice Services, District V, and was the Bureau

official designated as the “Approving Official” for the Tribe’s ISDEAA proposal, and who issued the contract declination and related correspondence that form the basis of this Complaint. Approving Officials are responsible for, *inter alia*, determining the contractibility of Bureau programs, services and functions or portion thereof; identifying potential declination and/or trust protection issues in contract proposals; approving or declining the contract/grant proposal pursuant to statute and requirements outlined in 25 C.F.R. §900; ensuring program objectives are consistent within authorizing legislation and appropriation language; and providing technical assistance to Indian tribes and tribal organizations in support of self-determination contracting. Indian Affairs Manual, Part 13, Ch. 2, § 1.5.F.

#### JURISDICTION

14. This Court has jurisdiction over the subject matter under 28 U.S.C. § 1331, 1361 and 1362 because this is a civil action arising under the laws of the United States, including 25 U.S.C. § 5321, and is brought by an Indian tribe with a governing body duly recognized by the Secretary of the Interior, to compel Defendants to perform duties owed to Plaintiff. Under 25 U.S.C. §§ 5321(b)(3) and 5331, the Court has jurisdiction over an action initiated in federal district court by

a tribe seeking a hearing on the Secretary's decision to decline an ISDEAA contract proposal.

15. The Government has waived its sovereign immunity under 25 U.S.C. § 5331 because this is an action in federal court seeking relief against an action by an officer of the United State or an agency thereof contrary to the ISDEAA seeking immediate injunctive relief to reverse a declination finding under 25 U.S.C. § 5321(a)(2) and to compel the Secretary of the Interior to award and fund a self-determination contract.

#### VENUE

16. Venue is proper in the District of Montana under 28 U.S.C. §§ 1391(b) and (e) because an officer or employee of the United States is a defendant and a substantial part of the events or omissions giving rise to the claim occurred in this District.

#### APPLICABLE LAW

##### Indian Self-Determination and Education Assistance Act

17. In enacting the ISDEAA, Congress recognized the Government's obligation to assure maximum Indian participation in the direction of federal services to Indian communities, and its commitment to an orderly transition from

federal domination of Indian services to effective and meaningful participation by Indian tribes in the planning, conduct and administration of services to Indian communities. 25 U.S.C. § 5302.

18. The Secretary is directed, upon the request of any Indian tribe, to enter into a self-determination contract to plan, conduct and administer programs or portions thereof for the benefit of Indians because of their status as Indians, without regard to the agency or office of DOI within which the program or service is performed. 25 U.S.C. § 5321(a)(1)(E).

19. The programs, functions, services, or activities that are contracted under 25 U.S.C. § 5321(a)(1) shall include administrative functions of DOI that support the delivery of services to Indians, without regard to the organizational level within the Department that carries out such functions. 25 U.S.C. § 5321(a)(1).

20. The Secretary is required, at all times, to negotiate self-determination contracts in good faith to maximize the policy of tribal self-determination and carry out the ISDEAA in a manner that maximizes the policy of tribal self-determination. 25 U.S.C. § 5321(f).

21. The Secretary is required to provide technical assistance upon request by a tribe to develop a new self-determination contract, to provide for tribal

assumption of a program under 25 U.S.C. § 5321 or to modify a self-determination contract proposal after a Secretarial declination. 25 U.S.C. § 5322(d).

22. A self-determination contract proposal shall include the standards under which the tribal organization will operate the contracted program, service, function, or activity, 25 U.S.C. § 5321(a)(2), and applicable program standards shall also be set forth in the final contract with the tribe, 25 U.S.C. § 5324(a)(2).

23. 25 C.F.R. § 900.8 lists the information a tribe's initial contract proposal must contain, including: a description of the proposed program standards (§ 900.8(g)(4)); minimum staff qualifications proposed (§ 900.8(g)(7)); and a statement that the tribe will implement procedures appropriate to the programs proposed to be contracted as otherwise required by law (§ 900.8(m)).

24. The Secretary may not require a tribe to submit any other information beyond that identified in 25 C.F.R. §900.8. 25 C.F.R. § 900.9.

25. The Secretary may not impose any nonregulatory requirements relating to the approval, award or declination of self-determination contracts, 25 U.S.C. § 5328(a)(1), or require tribes to “abide by any unpublished requirements such as program guidelines, manuals or policy directives of the Secretary, unless

otherwise agreed to by the Indian tribe” or otherwise required by law, 25 C.F.R. § 900.5.

26. If the Secretary considers a tribal proposal for a self-determination contract and determines that the tribe lacks adequate internal controls necessary to manage the contracted program or programs, the Secretary shall, as soon as practicable, provide the necessary technical assistance to assist the tribe in developing adequate internal controls—including development of a plan for assessing the subsequent effectiveness of such technical assistance. 25 U.S.C. § 5324(q). The inability of the Secretary to provide technical assistance or lack of a plan shall not result in the declination or rejection of a new contract. *Id.*

27. The amount of funds provided under the terms of self-determination contracts shall not be less than the Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within DOI at which the program, including supportive administrative functions that are otherwise contractable, is operated. 25 U.S.C. § 5325(a).

28. Once a tribe submits a proposal for a self-determination contract, the Secretary shall, within ninety days after receipt of the proposal, approve the

proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that:

28.1 the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory, 25 U.S.C. § 5321(a)(2)(A) and 25 C.F.R. § 900.22(a);

28.2 adequate protection of trust resources is not assured, 25 U.S.C. § 5321(a)(2)(B) and 25 C.F.R. § 900.22(b);

28.3 the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract, 25 U.S.C. § 5321(a)(2)(C) and 25 C.F.R. § 900.22(c);

28.4 the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under 25 U.S.C. § 5325(a), 25 U.S.C. § 5321(a)(2)(D) and 25 C.F.R. § 900.22(d); or

28.5 the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities because the proposal includes activities that cannot lawfully be carried out by the contractor. 25 U.S.C. § 5321(a)(2)(E) and 25 C.F.R. § 900.22(e).

29. The Secretary may only decline a contract proposal for the reasons listed in 25 U.S.C. § 5321(a)(2) and 25 C.F.R. § 900.22. 25 C.F.R. § 900.24. The Secretary cannot decline any proposal based on any objections “that will be overcome through the contract.” 25 C.F.R. § 900.23.

30. The Secretary is required to provide any necessary requested technical assistance to a tribe, and share all relevant information with the tribe, to avoid declination of a proposal. 25 C.F.R. § 900.28.

31. The Secretary is required to provide additional technical assistance to overcome stated objections to a declined proposal, and to develop any modifications to overcome the stated objections. 25 C.F.R. § 900.30.

32. The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described under 25 U.S.C. § 5321(a)(2); thus, if a tribe submits a contract proposal that proposes a level of funding that is in excess of the applicable level determined under 25 U.S.C. § 5325(a), the Secretary shall approve the contract with a level of funding authorized under section 5325(a). 25 U.S.C. § 5321(a)(4).

33. A tribe may request reimbursement for pre-award costs, so long as the Secretary receives written notification of the nature and extent of the costs prior to

the date on which such costs are incurred. 25 C.F.R. § 900.7; 25 U.S.C. § 5322(a)(2); 25 U.S.C. § 5325(a)(6). Upon approval of a self-determination contract, the full amount of funds to which the Tribe is entitled under § 5325(a), which includes pre-award costs, shall be added to the contract. 25 U.S.C. § 5325(g).

34. The Bureau's policy on pre-award costs requires only that the Tribe submit "prior written notice of the nature and extent of the costs before they are incurred." Indian Affairs Manual, Part 13, Ch. 7, § 1.7. The Bureau is to provide technical assistance to discuss eligible pre-award costs. *Id.*

35. Under 25 U.S.C. § 5321(b), if the Secretary declines a contract proposal, the Secretary is required to state any objections in writing to the tribe; provide assistance to the tribe to overcome the state objections; and provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate, except that the tribe may, in lieu of filing such appeal, exercise the option to initiate an action in a federal district court and proceed directly to such court pursuant to 25 U.S.C. § 5331(a).

36. The Secretary is also required to provide a tribe with any documents relied upon in making the declination decision, within 20 days of the decision. 25 C.F.R. § 900.29(a).

37. In the federal district court, tribes may seek appropriate relief including money damages; injunctive relief against any action by an officer of the United States or any agency thereof contrary to the ISDEAA or its implementing regulations; or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under the ISDEAA or its implementing regulations, including immediate injunctive relief to reverse a declination finding under 25 U.S.C. § 5321(a)(2) or to compel the Secretary to award and fund an approved self-determination contract. 25 U.S.C. § 5331.

38. The ISDEAA is to be liberally construed for the benefit of the tribe participating in self-determination, and all ambiguity shall be resolved in favor of the tribe. 25 U.S.C. § 5321(g).

#### Indian Country Law Enforcement

39. The Indian Law Enforcement Reform Act (ILERA), Pub. L. No. 101-379 (25 U.S.C. 2801 *et seq.*), establishes and memorializes the federal government's duty to provide law enforcement services to tribes, including

standards for education, experience and background checks of tribal law enforcement officers

40. 25 U.S.C. § 2802(d)(1) requires the Secretary to “establish within the Office of Justice Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of title 18, United States Code, within Indian country.”

41. In the ILERA, Congress expressly supported contracting of criminal investigation functions to tribes. 25 U.S.C. § 2802(d)(4)(i) provides that while BIA criminal investigative personnel “shall be subject only to the supervision and direction of law enforcement personnel of the Branch [of Criminal Investigations] or the Office of Justice Services,” “[n]othing in this paragraph is intended to . . . prohibit or restrict the right of a tribe to contract the investigative program under the authority of Public Law 93-638 or to maintain its own criminal investigative operations.”

42. Under 25 U.S.C. § 2805, DOI is authorized to, “[a]fter consultation with the Attorney General of the United States, . . . prescribe under this Act regulations relating to the enforcement of criminal laws of the United States and regulations relating to the consideration of applications for contracts awarded under the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations.” However, no such regulations have been promulgated.

43. 25 U.S.C. § 2802(e)(1) requires the Secretary to “establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the Office of Justice Services who are charged with law enforcement responsibilities pursuant to section 4 [25 USC § 2803]” but provides that “[l]aw enforcement personnel of the Office of Justice Services or an Indian tribe may satisfy the training standards established under subparagraph (A) through training at a State or tribal police academy, a State, regional, local, or tribal college or university, or other training academy (including any program at a State, regional, local, or tribal college or university) that meets the appropriate Peace Officer Standards of Training.”

44. BIA's Office of Justice Services is required to develop standards and deadlines for the provision of background checks to tribal law enforcement and corrections officials. 25 U.S.C. § 2802(e)(4)(A).

45. If a request for a background check is made by an Indian tribe that has contracted or entered into a compact for law enforcement or corrections services with the Bureau of Indian Affairs pursuant to the ISDEAA, the Bureau's Office of Justice Services shall complete the check not later than 60 days after the date of receipt of the request, unless an adequate reason for failure to respond by that date is provided to the Indian tribe in writing. 25 U.S.C. § 2802(e)(4)(B).

46. Tribal law enforcement programs receiving federal funding are required to adhere to polices and standards set forth in 25 C.F.R. Part 12. 25 C.F.R. § 12.11.

47. Indian country law enforcement programs that receive federal funding and/or commissioning will be subject to a periodic inspection or evaluation to provide technical assistance, to ensure compliance with minimum federal standards, and to identify necessary changes or improvements to BIA polices. 25 C.F.R. § 12.12.

48. All Indian country law enforcement programs receiving federal funding and/or authority must ensure that all law enforcement officers successfully complete a thorough background investigation no less stringent than required of a federal officer performing the same duties. 25 C.F.R. § 12.32. In addition, background investigations of applicants and employees must be adjudicated by trained and qualified security professionals, and all background investigations must be documented and available for inspection by the Bureau of Indian Affairs. *Id.*

49. Law enforcement personnel of any program funded by the Bureau of Indian Affairs must not perform law enforcement duties until they have successfully completed a basic law enforcement training course. 25 C.F.R. § 12.35.

50. The Bureau's agency superintendent must ensure technical support is provided to any agency contracting the Bureau's law enforcement program. 25 C.F.R. § 12.4.

## ALLEGATIONS

### The Northern Cheyenne Reservation

51. The Northern Cheyenne Tribe of Montana has approximately 12,000 members. The Northern Cheyenne Indian Reservation ("the Reservation") is located in present-day southeastern Montana, and is approximately 444,000 acres

in size with 99% tribal ownership. Approximately 5,000 members of the Tribe reside on the Reservation. The Reservation is located in the counties of Big Horn and Rosebud.

52. The Northern Cheyenne Reservation was first established by Executive Order dated November 26, 1884, under the administration of Chester A. Arthur and extended March 19, 1900, under the administration of William McKinley. In 1926, Congress passed the Northern Cheyenne Allotment Act to secure the Reservation's land and resources "for the permanent use and occupation of the Northern Cheyenne Indians" by declaring that all property within the Reservation belongs to the Tribe. 44 Stat. 690 (June 3, 1926).

53. The Northern Cheyenne Reservation is Indian country under 18 U.S.C. § 1151.

#### Law Enforcement at Northern Cheyenne

54. The Bureau is solely responsible for providing law enforcement services on the Tribe's Reservation, including uniformed patrol officers, dispatchers and criminal investigators. All police officers on the Reservation are currently funded, employed and managed by the Bureau of Indian Affairs.

55. Currently, the Tribe faces unacceptable levels of violent crime, crimes against children and vulnerable adults, and drug-related crime with the Reservation. This has been true for many years.

56. The Tribe has been dissatisfied with the level of law enforcement service provided by the Bureau for several years and has attempted to work with the Bureau to address the issues, including a lack of qualified officers assigned to the Reservation and a lack of adequate criminal investigations.

57. According to BIA's Office for Justice Services, Northern Cheyenne should have the following 19 law enforcement staff in addition to criminal investigators: 1 chief of police, 2 lieutenants, 2 drug enforcement officers, and 14 police officers. Over the last several years, there has been an average of less than 6 such staff assigned to the Reservation. Sometimes, there is a single officer on duty at a time. Thus, it is often impossible to address more than one incident of crime at a time. In addition to responding to incidents all over a large Reservation, there is currently no detention facility on the Reservation, with the closest being anywhere from 30 to 90 miles away, depending from which part of the Reservation one travels. Thus, transporting offenders to far-off detention facilities is time consuming and takes away from other important duties like patrols, responding to calls, writing up

reports to support investigations and prosecutions and attending court hearings. The officers that are assigned to the Reservation are over-worked and therefore less efficient and effective. And when working by themselves, without backup support, the officers are more at risk. Due to these challenges, the turnover rate of staff assigned to the Northern Cheyenne Reservation is high.

58. Many crimes committed within the Reservation are not properly investigated. This is due in part to the Bureau's failure to employ two criminal investigators at Northern Cheyenne. Without proper investigation, the crimes are not prosecuted and the offenders are free to continue to engage in criminal conduct.

#### The Tribe's Self-Determination Contract Proposal

59. On July 20, 2020, the Tribe submitted a letter of intent and authorizing Tribal Council resolution to the Bureau informing of the Tribe's intent to submit a self-determination contract proposal for the Bureau's criminal investigation functions. The Tribe's letter of intent is attached to this Complaint as Exhibit 1. The Tribe requested information from the Bureau about the criminal investigation ("CI") program, including all FY 2020 and FY 2021 budgets of funding available to the Bureau to provide law enforcement services for the benefit of the Tribe and its members; the total number of full-time employees; a property/equipment

inventory of all items used to provide program services to the Tribe; copies of all position descriptions; and services provided by the Bureau including calls for service and uniform crime reports for the previous six months. Ex. 1 at 3.

60. Having heard nothing in response, on August 10, 2020, the Tribe's point of contact for the CI contract proposal inquired via email to Defendant Nioce as to the status of the Tribe's request. Defendant Nioce replied that the Bureau had not received a contract proposal from the Tribe, only a letter of intent. Defendant Nioce did not provide any of the documents requested by the Tribe in its July 2020 letter.

61. On August 19, 2020, the Tribe submitted a proposal to the Bureau to contract for Tribal assumption of the Bureau's Criminal Investigation and Division of Drug Enforcement functions within the Northern Cheyenne Reservation. The Tribe's proposal is attached to this Complaint as Exhibit 2. The Tribe indicated that, if awarded the contract, the Tribe's minimum staff qualifications for the program's investigative staff would be commensurate with qualifications currently required by the Bureau. Ex. 2 at 2 (item (7)). The Tribe requested a first-year budget of \$1,178,185. *Id.* at 4 (item (H)(1)). The Tribe also requested pre-award costs of \$50,000 for the period of June 1, 2020 through September 30, 2020. *Id.* at

4-5 (Item (H)(4)). The Tribe confirmed that it would implement procedures appropriate to the program, assuring the confidentiality of information as required by law. *Id.* at 5-6 (Item (m)).

62. In its Scope of Work attached to the proposal, the Tribe noted that the Tribe was proposing to contract for the Bureau's CI and Division of Drug Enforcement ("DDE") programs because the Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members. Ex. 2 at 9. The Tribe stated its commitment to reducing the use, manufacture and distribution of dangerous drugs within the Reservation. *Id.* The Tribe acknowledged that investigators would be required to work closely with Tribal, federal and state law enforcement during criminal investigations and would work in cooperation and conjunction with the Bureau. *Id.* at 9-10. The Tribe also confirmed that the Tribal Investigative Services program would utilize the Bureau's standards for CI and DDE program functions under the contract, *id.* at 10.

63. The Tribe's proposal indicated that Criminal Investigators hired under the contract would be required to complete criminal investigator training and any other mandatory training, to meet initial and continued qualifications in the use of

firearms, to pass a physical condition examination, and to successfully complete a background security investigation. Ex. 2 at 18-19.

64. The Tribe's proposed budget included costs to send investigators hired by the Tribe to obtain required training if necessary. Ex. 2 at 24.

The Bureau's Response to the Tribe's Contract Proposal

65. BIA wrote to the Tribe on September 11, 2020 and outlined four deficiencies in the proposal. BIA requested that the Tribe "correct, submit or provide clarification for the following items" under 25 CFR § 900.15. BIA's letter is attached to this Complaint as Exhibit 3.

66. First, BIA requested a "revised proposal that includes a request to contract only the CI program, with a revised budget and funding request for \$203,846. Include an itemized budget to identify planned use of funding for personnel/fringe benefits and other associated costs to carry out the CI PFSA." Ex. 3 at 1. BIA noted that "[t]he Tribe's proposed contract includes a budget request for funding direct operation of the CI program and the DDE Program in the amount of \$1,198,823" but that "[t]he DDE Program is a central office function which is ineligible for contracting." *Id.* (citing the Further Consolidated Appropriations Act

of 2020, Pub. L. No. 116-94, 133 Stat. 2534, 2701 (Dec. 20, 2019)).<sup>1</sup> BIA informed the Tribe that “[t]he BIA OJS FY2020 base funding allocation (Secretarial level amount) . . . for the CI program for the Northern Cheyenne Tribe is \$203,846.” *Id.*

67. Second, BIA requested that the Tribe “[p]rovide the names of personnel who will be hired as sworn officers for CI positions and a detailed plan on how the Tribe will complete pre-employment background investigations and adjudication of background investigations as required by 25 U.S.C. § 2802(e)(4)(A) and 25 CFR § 12.32.” Ex. 3 at 2. BIA also sought

a detailed description for how you plan to ensure that the personnel you hire have completed the required basic training requirements for a certified police officer under 25 U.S.C. § 2802(e)(1) and mandatory training requirements for a CI position for all personnel who will be working within the CI program per Section IV (4) of the Memorandum of Understanding (MOU) [Between the U.S. Department of the Interior Bureau of Indian Affairs and the U.S. Department of Justice, Federal Bureau of Investigation], which states: "Any contracts awarded under ISDEAA to perform the function of the BIA, Branch of Criminal Investigators, must comply with all standards applicable to the Branch of Criminal Investigators, including (b). Criminal Investigators must be

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<sup>1</sup> The relevant section of the 2020 Appropriations Act at 133 Stat. 2701 states:

Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs or the Bureau of Indian Education for central office oversight and Executive Direction and Administrative Services (except executive direction and administrative services funding for Tribal Priority Allocations, regional offices, and facilities operations and maintenance) shall be available for contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs or the Bureau of Indian Education under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).

certified Peace Officers and must have satisfactorily completed the basic Criminal Investigator course provided by the DOT at the Federal Law Enforcement Training Center, or an equivalent course approved by the BIA."

*Id.* BIA stated that this information was needed because "[t]he Tribe must be ready to assume the CI program upon BIA OJS approval of the initial contract proposal. This entails the hiring of personnel, the completion of background investigations (BIs) that are no less stringent than that of a federal officer performing law enforcement duties (including adjudication of BIs by a qualified/trained adjudicator) as required by 25 U.S.C. § 2802(e)(4)(A) and 25 C.F.R. § 12.32, and completion of minimum required basic training requirements as described in 25 U.S.C. § 2802(e)(1)." *Id.* BIA asserted that the Tribe's "TAP Kiosk does not meet the minimum federal BI and adjudication requirements for a certified law enforcement officer position. The S[cope] O[f] W[ork] does not provide a plan on how the Tribe plans to complete the required background investigations and adjudications of hired employees to comply with minimum standard BI requirements." *Id.*

68. BIA did not provide the Tribe with a copy of the BIA-FBI MOU cited in Exhibit 3 and described in paragraph 67 above.

69. Third, BIA's letter requested that the Tribe

[s]ubmit a revised and/or updated clarifying SOW or other documentation which demonstrates that the Tribe's criminal investigators will be required to request and be issued a Special Law Enforcement Commission (SLEC) under 25 U.S.C. § 2804 before assuming CI duties, that all criminal investigators employed by the Tribe will be adequately supervised by an individual appropriately trained in criminal investigative techniques, and protocols for information sharing, referrals and tracking of cases, dispatch protocols, and the handling of evidence.

Ex. 3 at 3.

70. Fourth, BIA informed the Tribe that

[p]rior to approval of this proposal OJS will require a written agreement between the Tribe and the affected divisions within OJS, to include the District V Office and Bureau of Criminal Investigation, that provides processes and outlines authorities for supervision and technical assistance to Tribal criminal investigators by the OJS BCI and which includes how coordination of all other law enforcement functions retained by BIA OJS will be carried out.

Ex. 3 at 3.

71. BIA stated that these requests were required to ensure that “law enforcement services provided to the residents and visitors of the Northern Cheyenne Indian Reservation are satisfactory,” that “the Tribe’s Criminal Investigative Service [has] appropriate commissioning and adequate supervision by qualified supervisory personnel,” and that the CI program “work[s] efficiently with the remaining federally operated BIA law enforcement program(s) on the Northern

Cheyenne Reservation.” Ex. 3 at 2. BIA observed that the Tribe’s proposal lacked “a plan for tribal investigators to obtain federal commissioning, supervision by qualified personnel, or details of how the Tribe will work with the remaining OJS law enforcement programs, particularly with regard to the sharing of information, referral of cases for investigation, dispatch protocols, and the maintenance of evidence needed by both the Uniform Police and Criminal Investigation programs.” *Id.* According to BIA, this issue apparently arises because the Tribe sought to contract only for the CI program and not for “Uniform Law Enforcement, Corrections and Dispatch” functions, which would remain with BIA. *Id.*

72. Finally, BIA requested “clarification or further justification addressed to the BIA Awarding Official at the Rocky Mountain Regional Division of Self-Determination” regarding the Tribe’s request for pre-award costs of \$50,000 for the period of June 1, 2020 through September 30, 2020. *Id.* at 4. BIA noted that pre-award costs may not be included in the proposal if BIA does not receive written notification of the nature and extent of those costs prior to the date on which the costs are incurred and thus disallowed any pre-award costs prior to August 19, 2020. *Id.* (citing 25 U.S.C. § 5325(a)(6)).

73. BIA requested that the Tribe “submit all missing items and written responses with clarifications” by September 28, 2020. *Id.* BIA also noted that should the Tribe’s proposal be approved, there is a “180 day phase-in period for newly contracted tribal CI programs” to “ensure an orderly transition from one law enforcement agency to the other.” *Id.* (citing 25 U.S.C. § 2802(d)(1); 25 U.S.C. § 2804(a)(3)(B)(i), and a BIA-FBI MOU).

74. The Tribe requested technical assistance from BIA via letter on September 17, 2020, which is attached to this Complaint as Exhibit 4.

75. The Tribal President, Tribal Administrator, Tribal staff who prepared the contract proposal and the Tribal Attorney spoke to BIA officials, including Defendant Nioce, on September 28, 2020. Defendants indicated that Defendant Nioce was the decisionmaker in terms of accepting or declining the Tribe’s proposal. Defendants agreed to provide the Tribe with sample agreements referenced in its letter and in paragraphs 67-70 above. Otherwise, Defendants just reiterated the requests contained in the Bureau’s September 11 letter without providing meaningful technical assistance to the Tribe.

The Tribe's Reply to the Bureau's Requests

76. The Tribe sent a letter to BIA on October 9, 2020, which is attached to this Complaint as Exhibit 5.

77. In response to BIA's first request for a revised budget, the Tribe informed BIA that it "proposed a larger budget based on the information available to it at the time, which was very limited because [BIA] failed to provide budgetary information about the CI program," which the Tribe had requested in July 2020, including "budgets for FY 2020 and 2021; the current FTEs and copies of position descriptions; a description of all services provided; and the equipment and supplies available to the program." Ex. 5 at 1. The Tribe "re-requested" that information and reiterated that the "most important information we need are the allocation tables for District V Northern Cheyenne Agency for all of law enforcement and criminal investigation and the organizational chart of personnel. We cannot provide a revised budget until we get this information. BIA is required to provide this information to the Tribe under 25 CFR §§ 900.3, 900.7, and 900.8, and other applicable law." *Id.*

78. In response to BIA's second request for the names of personnel who will be hired as sworn officers for CI positions and a detailed plan on how the Tribe

will complete pre-employment background investigations and adjudication of background investigations as well as a detailed description of how the Tribe plans to ensure that the personnel hired have completed the required basic training requirements for a certified police officer and mandatory training requirements for a CI position, the Tribe observed that it is not required to provide that information per 25 C.F.R. §§ 900.8 and 900.9. Ex. 5 at 1-2. As to the names of individuals who will be hired under the contract, the Tribe stated that it will “hire people once the contract is awarded” and 25 C.F.R. § 900.8 does not require a tribe’s proposal to name the individuals who will be hired. Ex. 5 at 1.

79. The Tribe reiterated that 25 C.F.R. § 900.8 and 900.9 do not allow BIA to request a “detailed plan” of how the Tribe will complete background investigations and adjudications or ensure individuals complete mandatory training required by applicable law and a memorandum of understanding. Ex. 5 at 1-2. Instead, § 900.8 requires the Tribe to affirm it “will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposed contract, or as otherwise required by law.” The Tribe affirmed that it would do so

and that “once the contract is awarded to the Tribe, it will comply with all applicable legal requirements including in its hiring and training practices.” Ex. 5 at 2; *see also* paragraphs 61 through 64, *supra* (citing Ex. 2 at 2 (item (7)), at 5-6 (Item (m)), at 10, 18-19 and 24).

80. As to BIA’s third request for documentation to clarify that the Tribe’s criminal investigators will be required to request and be issued a SLEC before assuming CI duties and will be supervised by an individual appropriately trained in criminal investigation techniques and protocols for information sharing, referrals, and tracking of cases, dispatch protocols, and the handling of evidence, the Tribe confirmed that the Tribe will carry out the above. Ex. 5 at 2; *see also* paragraph 62, *supra* (citing Ex. 2 at 9-10).

81. The Tribe again requested a copy of the BIA-FBI MOU cited in footnotes 2 and 3 of the September 11 letter (Ex. 3), and an agreement that BIA-OJS “has used to cover the requirements set forth in the second full paragraph of page 3 of your letter,” *i.e.*, the requirement for a pre-contract agreement between the Tribe and BIA regarding how Tribal CIs would work with law enforcement functions retained by BIA. Ex. 5 at 2. BIA previously promised to provide those documents to the Tribe during the September 28 technical assistance call.

82. Finally, the Tribe clarified that pursuant to 25 C.F.R. § 900.7, it requested \$50,000 for pre-award costs to begin to build the CI program, including job advertising, developing systems, and any work to complete the contracting process. Ex. 5 at 2.

The Bureau's Final Reply to the Tribe

83. Over one month after the Tribe's letter, and a mere four days before BIA's deadline to respond to the Tribe's ISDEAA proposal, BIA responded via letter on November 13, 2020, which is attached to this Complaint as Exhibit 6. With that letter, BIA provided, for the first time, the information requested by the Tribe four months earlier in its July 2020 letter of intent, and some of the information the Tribe requested on September 28 and October 9 for purposes of revising the budget for the CI program. BIA indicated that it has funding for two criminal investigator positions at Northern Cheyenne, Ex. 6 at 4 and 8; however, the documents provided confirmed that only one of the positions is currently filled. *See* Ex. 6 at 5-7.

84. BIA indicated that because the 25 U.S.C. § 5325(a)(1) funding amount for the CI program is \$203,486, the Tribe's proposed funding level in excess of that amount was subject to partial declination. Ex. 6 at 1.

85. BIA indicated that information requested regarding background investigation materials and training certificates for law enforcement staff was necessary “to avoid a potential declination issue under 25 U.S.C. § 5325(a)(2)(A) and 25 C.F.R. § 900.22(a)” because “[t]he service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.” Ex. 6 at 2 (emphasis in original). BIA stated that the CI program is “an essential service for public safety” that “cannot have a lapse in operations while transitioning to Tribal management,” and that a “lack of qualified staff to carry out this function immediately upon award of the contract would endanger” public health and safety. *Id.* BIA did not mention the 180-day phase-in period for the CI program previously described by the Bureau, *see* Ex. 3 at 3, or respond to the Tribe’s contention that it intended to adhere to all applicable laws regarding hiring and training requirements, *see* Ex. 5 at 2.

86. In addition, BIA asserted that “[t]he minimum standards for background investigations and law enforcement training are discussed at length in our September 11 letter, and in the attached [doc].” Ex. 6 at 2. However, BIA’s September 11 letter referred solely to requirements contained in a BIA-FBI MOU

that BIA never provided to the Tribe, *see* Ex. 3 at 2, and no such document was attached to the Bureau's November 13 letter.

87. BIA stated that in addition to the Tribe's written commitment to comply with the requirement that all criminal investigators would be supervised only by law enforcement personnel, BIA required the Tribe to revise its statement of work to "provid[e] that all criminal investigators employed by the Tribe will be adequately supervised by an individual appropriately trained in criminal investigative techniques, and protocols for information sharing, referrals and tracking cases, dispatch protocols, and the handling of evidence." Ex. 6 at 2. BIA indicated that it provided a sample of acceptable language; however, no such sample was provided with the letter. BIA indicated that failure to address the issue as BIA requested would result in declination under 25 C.F.R. § 900.22 (a) and (d).

88. BIA's November 13 letter did not discuss the Tribe's request for pre-award costs or contend that the information regarding the nature and extent of costs disclosed in the Tribe's October 9 letter was insufficient, nor did BIA offer technical assistance to discuss eligible pre-award costs.

89. BIA requested an extension of the 90-day deadline to respond to the Tribe's proposal, which the Tribe refused by letter dated November 16, 2020 stating

that if the Tribe's proposal was denied, BIA would be violating the ISDEAA. That letter is attached to this complaint as Exhibit 7.

The Bureau's Unlawful Declination of the Tribe's Proposal

90. BIA declined the Tribe's proposal on November 17, 2020, citing 25 U.S.C. §§ 5321(a)(2)(A), (C), (D) and (E) as the reasons for its declination. That declination letter is attached to this Complaint as Exhibit 8. As explained below, each of the reasons supplied by BIA for declining the contract violated the ISDEAA.

91. First, BIA declined the contract for Division of Drug Enforcement functions under 25 U.S.C. § 5321(a)(2)(E) on the erroneous basis that "[t]he DDE program is a central office function that is ineligible for contracting." Ex. 8 at 2 (citing the Further Consolidated Appropriations Act of 2020, Pub. L. No. 116-94, 133 Stat. 2534, 2701 (Dec. 20, 2019)). In fact, the DDE functions are funded as part of the Bureau's Public Safety and Justice appropriation and are not part of the Bureau's central office oversight or Executive Direction and Administrative Services appropriation. Therefore the 2020 Appropriations Act does not render DDE functions ineligible for ISDEAA contracting.

92. Second, BIA partially declined the contract for the CI program to the extent that the budget exceeded \$203,846, which is the FY 2020 base funding allocation for the CI program, under 25 U.S.C. § 5321(a)(2)(D). Ex. 8 at 2. BIA violated the ISDEAA by failing to award the contract for a lesser amount, as required by 25 U.S.C. § 5321(a)(4). Under 25 U.S.C. § 5321(a)(4), Defendants were required to approve any severable portion of the Tribe's contract proposal that does not support a declination finding described 25 U.S.C. § 5321(a)(2), with the level of funding authorized under section 5325(a).

93. Third, BIA declined the contract under 25 U.S.C. § 5321(a)(2)(A) because “[t]he Tribe’s proposal will not deliver satisfactory services.” Ex. 8 at 2-3. BIA based this conclusion on the Tribe’s failure to provide “background materials and training certificates for all Indian country law enforcement officers whom the Tribe is employing or intends to employ to carry out the contract, as required by 25 U.S.C. § 2802(e)(4)(A) and 25 U.S.C. § 2802(e)(1).” BIA asserted that the lack of qualified staff to carry out the CI function immediately upon award of the contract would endanger the health and safety of all residents and visitors to the Tribe’s Indian country. Ex. 7 at 2. However, BIA failed to mention: (a) the Tribe’s express agreement to adhere to all applicable laws regarding hiring and

training requirements, *see* Ex. 5 at 2; (b) that any of BIA’s objections could have been overcome through the contract itself under 25 C.F.R. § 900.23; (c) the 180-day phase-in period for the CI program previously described by the Bureau, *see* Ex. 3 at 3; and (d) BIA’s own statutory requirement to conduct background investigations when requested by a contracting tribe under 25 U.S.C. § 2802(e)(4)(B). Additionally, to the extent BIA required submittal of information beyond that listed in 25 C.F.R. § 900.8, such as the names of staff that will be hired under the contract, BIA violated 25 C.F.R. § 900.9. Therefore, it was erroneous and unlawful for BIA to conclude that the Tribe’s proposal “will not” deliver satisfactory services.

94. Fourth, BIA stated that the Tribe’s stated intent to use the TAP Kiosk to complete background investigations, and the Tribe’s failure to provide a revised plan to completing employee background adjudications in compliance with federal standards, required BIA to decline the proposal under 25 U.S.C. § 5321(a)(2)(A) because the Tribe “failed to address these minimum requirements for the operation of the program.” Ex. 8 at 3. However, BIA failed to note that it is obligated to provide those background investigation services under 25 U.S.C. § 2802(e)(4)(B) or explain why this objection could not be overcome through the contract itself.

Additionally, it is unlawful to decline an ISDEAA contract on the basis that information not listed in 25 C.F.R. § 900.8 is required to be submitted. 25 C.F.R. § 900.9. Thus, declining the contract under 25 U.S.C. § 5321(a)(2)(A) was unlawful.

95. Fifth, BIA stated that without details about how the Tribal-run CI program would work with the BIA-run Uniform Law Enforcement, Corrections and Dispatch programs, particularly with regard to information sharing, referral of cases for investigation, dispatch protocols and maintenance of evidence, BIA must decline the contract under 25 U.S.C. § 5321(a)(2)(A). Ex. 8 at 3. However, it is unlawful to decline an ISDEAA contract on the basis that information not listed in 25 C.F.R. § 900.8 is required to be submitted. 25 C.F.R. § 900.9. BIA did not mention its own failure to provide adequate technical assistance to the Tribe by supplying sample language for a Tribal-BIA agreement that would satisfy this requirement or the 180-day phase-in period for the CI program previously described by the Bureau. Furthermore, BIA did not explain why this objection could not be overcome through the contract itself. For these reasons, this basis for declining the contract was unlawful.

96. Sixth, BIA declined the contract under 25 U.S.C. § 5321(a)(2)(A) because the Tribe's proposal did not provide a plan for tribal investigators to obtain federal commissioning or supervision by qualified personnel. Ex. 8 at 3. However, it is unlawful to decline an ISDEAA contract for the failure to submit information not listed in 25 C.F.R. § 900.8 is required to be submitted. 25 C.F.R. § 900.9. Also, BIA failed to mention its own failure to provide adequate technical assistance to overcome this objection by not providing the Tribe with any sample agreements or scope of work language that would satisfy this requirement, failed to mention the 180-day phase in period, and failed to explain why this objection could not be overcome through the contract itself. Thus, this basis for declining the contract has no merit.

97. Finally, BIA asserted that the Rocky Mountain Regional Office could not make a determination or recommendation to the BIA Central Office to approve or decline the Tribe's pre-award costs request because "the Tribe did not submit a budget." Ex. 8 at 3. Thus, the Bureau denied the Tribe's pre-award costs request under 25 U.S.C. § 5321(a)(2)(D). *Id.* BIA failed to acknowledge that the Tribe submitted clarification of the nature and extent of the pre-award costs with its October 9 letter. Under 25 U.S.C. §§ 5322(a)(2), 5325(a)(6) and 5325(g), and 25

C.F.R. § 900.7, Defendants were required to award the Tribe its requested pre-award costs incurred in preparing the proposed contract, and to provide technical assistance in identifying eligible costs. BIA violated the ISDEAA by not providing such assistance and not awarding pre-award costs.

98. Defendants, including BIA, violated the ISDEAA in other ways, including as follows.

99. Under 25 C.F.R. § 900.29(a), Defendants were required to provide the Tribe with any documents relied upon in making the declination decision, within 20 days of the decision. Defendants failed to do so.

100. Defendants' declination letter cites 25 U.S.C. § 5321(a)(2)(C) as a declination reason in its introductory paragraph but no further explanation of this declination criteria is provided in the letter. Thus, to the extent Defendants relied upon § 5321(a)(2)(C) for the declination, they failed to support it with any rationale.

101. As indicated above, under 25 C.F.R. § 900.9, Defendants may not require a tribe to submit information as part of a self-determination contract proposal that is not contained within 25 C.F.R. § 900.8. Defendants violated this provision by declining the Tribe's proposal because the Tribe failed to submit information not required by 25 C.F.R. § 900.8 or any other regulation.

102. As indicated above, under 25 U.S.C. § 5328(a)(1) and 25 C.F.R. § 900.5, Defendants may not require a tribe to adhere to nonregulatory requirements as a condition of entering into a self-determination contract. Defendants violated these provisions by requiring the Tribe to adhere to requirements imposed by an interagency MOU and ad hoc requirements imposed by the Bureau that are not part of any promulgated regulation.

103. Finally, under 25 U.S.C. § 5321(f), Defendants were required to, at all times, negotiate with the Tribe in good faith and carry out the ISDEAA in a manner that maximizes the policy of Tribal self-determination. Defendants failed to do so.

CLAIM I: DECLARATORY RELIEF (25 U.S.C. §§ 5321, 5322, 5324, 5328, 5331 and 25 C.F.R. Part 900)

1. The Tribe realleges and incorporates by reference the allegations contained in paragraphs 1 through 103 above.

2. Under 25 U.S.C. § 5321, 25 C.F.R. § 900.22 and applicable law, Defendants could only decline the Tribe's self-determination contract proposal for one of the five reasons in section 5321 and must adequately support any declination reason with clear and convincing evidence. Defendants failed to adequately support

their declination decision and declined the Tribe's proposal for reasons not allowed by section 5321.

3. The Tribe asks the Court to declare that the Defendants violated the ISDEAA and its implementing regulations through the foregoing actions.

CLAIM II: MANDAMUS RELIEF (28 U.S.C. § 1361; 25 U.S.C. § 5331)

1. The Tribe realleges and incorporates by reference the allegations contained in paragraphs 1 through 103 above.

2. Under the statutes, regulations and applicable law, Defendants have a non-discretionary duty to approve the Tribe's self-determination contract proposal unless one of the five declination reasons set forth in 25 U.S.C. § 5321(a)(2) applies.

3. Defendants failed to perform this nondiscretionary duty to Plaintiff. Defendants improperly declined the Tribe's proposal for reasons not allowed under the ISDEAA and/or failed to adequately support the declination of the Tribe's proposal by clear and convincing evidence.

4. Defendants failed to perform this nondiscretionary duty by failing to approve the severable portion of the Tribe's proposal under 25 U.S.C. § 5321(a)(4).

5. There is no adequate administrative remedy available to Plaintiff.

CLAIM III: INJUNCTIVE RELIEF (25 U.S.C. § 5331; Fed. R. Civ. P. 65)

1. The Tribe realleges and incorporates by reference the allegations contained in paragraphs 1 through 103 above.

2. Plaintiff asks the Court to order Defendants to enter into a self-determination contract with the Tribe as requested by the Tribe's August 2020, proposal, subject to any alteration in the proposal agreeable to the Tribe under 25 U.S.C. § 5321(a)(4), including award of the Tribe's pre-award costs.

CLAIM IV: EQUITABLE RELIEF

1. The Tribe realleges and incorporates by reference the allegations contained in paragraphs 1 through 103 above.

2. The Tribe spent its own funds to prepare its contract proposal and requested pre-award costs under 25 U.S.C. §§ 5322(a)(2), 5325(a)(6) and 5325(g), and 25 C.F.R. § 900.7.

3. Defendants improperly denied the Tribe's request for pre-award costs by imposing a nonregulatory requirement upon the Tribe to submit a "budget" for such costs and failing to provide the Tribe with technical assistance. Because of Defendants' unlawful actions, the Tribe has not been compensated for its reimbursable pre-award costs.

4. The Tribe seeks reimbursement and restitution from Defendants of funds that the Tribe spent in preparing the proposal, including its pre-award costs.

5. The Tribe seeks any other equitable relief that it may be entitled to receive under other applicable laws.

PRAYER FOR RELIEF

WHEREFORE, the Tribe respectfully requests that the Court:

1. Declare Defendants in violation of the Tribe's rights under the ISDEAA and its implementing regulations;

2. Order Defendants to enter into a self-determination contract with the Tribe and provide the Tribe with its requested pre-award costs;

3. Award the Tribe equitable restitution;

4. Award the Tribe its costs and attorney's fees incurred herein under 28 U.S.C. § 2412 and any other applicable law; and

5. Award such other relief as the Court deems just and equitable.

Dated this 15th day of December, 2020.

Respectfully submitted,

/s/ Joe A. Rodriguez

Joe A. Rodriguez, MT Bar #2650

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Lame Deer, MT 59043-0820

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pending)

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*Attorneys for Plaintiff*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

The Northern Cheyenne Tribe

(b) County of Residence of First Listed Plaintiff Rosebud County, MT (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

(See Attachment)

DEFENDANTS

United States of America (see attachment for others)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 25 U.S.C. § 5301 et seq.

Brief description of cause:

Plaintiff seeks relief from Defendants' unlawful contract declination under the Indian Self-Determination and Education Assistance Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE December 15, 2020

SIGNATURE OF ATTORNEY OF RECORD /s/ Joe A. Rodriguez

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attachment to Civil Cover Sheet

I.(c). Plaintiff's Attorneys:

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I. Defendants:

THE UNITED STATES OF AMERICA  
THE UNITED STATES DEPARTMENT OF THE INTERIOR  
THE BUREAU OF INDIAN AFFAIRS  
Department of the Interior: David BERNHARDT, Secretary of the Interior  
Department of the Interior: Darryl LACOUNTE, Director of the Bureau of Indian  
Affairs  
Bureau of Indian Affairs: Susan MESSERLY, Rocky Mountain Regional Office  
Director  
Bureau of Indian Affairs: Lenora NIOCE, BIA Special Agent in Charge/Approving  
Official



United States Department of the Interior  
Bureau of Indian Affairs  
Northern Cheyenne Agency  
P.O. Box 40  
Lame Deer, MT 59043

IN REPLY REFER TO:  
EXECUTIVE DIRECTION

July 22, 2020

Rynalea Peña, President  
Northern Cheyenne Tribe  
P.O. Box 128  
Lame Deer, MT 59043

Dear President Peña:

This is in reference to Northern Cheyenne Tribal Council Resolution No. DOI-118 (2020) enacted on July 9, 2020 and received on July 14, 2020.

Resolution No. DOI-118 (2020) approves submission of a proposal to assume responsibility for the criminal investigation unit including its support staff from the Bureau of Indian Affairs under P.L.93-638.

Resolution No. DOI-118 (2020) is hereby noted. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (a) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution & Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said resolution.

All necessary copies of this resolution have been retained for our files.

Sincerely,

ALONZO  
SPANG

Digitally signed by  
ALONZO SPANG  
Date: 2020.07.23  
10:34:27 -0600

Acting Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE  
NORTHERN CHEYENNE RESERVATION  
LAME DEER, MONTANA**

**RESOLUTION NO. DOI-118 (2020)**

**A RESOLUTION APPROVING SUBMISSION OF A PROPOSAL TO ASSUME RESPONSIBILITY FOR THE CRIMINAL INVESTIGATION UNIT INCLUDING ITS SUPPORT STAFF FROM THE BUREAU OF INDIAN AFFAIRS UNDER PL 93-638.**

**WHEREAS**, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996;

**WHEREAS**, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe, provide for the maintenance of law and order, and negotiate with the federal government on behalf of the Tribe and under Article IV, Sections 1(a), 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996;

**WHEREAS**, the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638) authorizes the Secretary of the Interior to enter into contracts with, and make grants directly to, federally recognized Indian tribes to authorize and enable tribes to have greater control over their welfare;

**WHEREAS**, law enforcement is one of the areas in which the Tribe has the right to obtain a PL 93-638 contract and funding to support the activities contemplated under the contract;

**WHEREAS**, the Northern Cheyenne Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members;

**WHEREAS**, for many years, the Bureau of Indian Affairs has had law enforcement responsibility on the Northern Cheyenne Reservation and has been chronically understaffed and unable to maintain law and order; and

**WHEREAS**, to improve public safety and enhance Tribal sovereignty and self-government, the Tribe intends to assume responsibility of the criminal investigation unit including its support staff through a PL 93-638 contract.

**THEREFORE, BE IT RESOLVED**, that the Northern Cheyenne Tribal Council hereby approves submission of a proposal under the Indian Self-Determination and Education Assistance Act of 1975 for the assumption of the criminal investigation unit of the Bureau of Indian Affairs including the support staff for such unit.

**BE IT FURTHER RESOLVED**, the Northern Cheyenne Tribal Council has designated John Grinsell as the point of contact for negotiations, as per the letter of intent.

**PASSED, ADOPTED AND APPROVED** by the Northern Cheyenne Tribal Council by 9 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 9<sup>th</sup> day of July 2020.



Rynalea Peña, President  
Northern Cheyenne Tribe

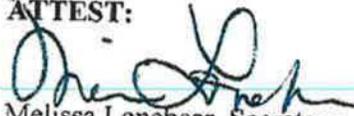
Noted:

ALONZO  
SPANG

Digitally signed by  
ALONZO SPANG  
Date: 2020.07.23  
10:33:33 -06'00'

Acting Superintendent

ATTEST:



Melissa Lonebear, Secretary  
Northern Cheyenne Tribe



# NORTHERN CHEYENNE TRIBE

## ADMINISTRATION

P.O. BOX 128  
LAME DEER, MONTANA 59043  
(406) 477-6284  
FAX (406) 477-6210



### Letter of Intent

On behalf of the Northern Cheyenne Tribe, in accordance with our Sovereign authority to determine the needs of our Tribe and tribal community and to exercise our right to enter into P.L. 93-638 Indian Self-Determination and Education Assistance Act government-to-government contracts with the Bureau of Indian Affairs, the Northern Cheyenne Tribe is in the planning phase of future assumption of the Bureau of Indian Affairs Office Justice Services Criminal Investigations program through a self-determination contract.

In order to determine what is best for our Tribe, we request from the BIA OJS all information regarding 1. Funding currently available to include funding budgets available for FY 2020 and FY 2021 available to BIA OJS to provide services that benefit the Northern Cheyenne Tribe; 2. Total number of FTE; 3. Property/Equipment Inventory of all items currently being used to provide BIA OJS Criminal Investigations program services by the BIA OJS; 4. Copies of all position descriptions; and 5. Services provided by BIA OJS to include [calls for services/UCR Reports for past six months/Detention Service Pop Reports/DOMR, etc.]

It is the intent of the Northern Cheyenne Tribe to make a proper and informed decision as to whether we will proceed with submission of a P.L. 93-638 contract proposal in accordance with the self-determination regulations at 25 CFR 900.8, and we will factor into that decision all of the information we receive from BIA OJS, therefore, we request all of the above information to be provided to us as soon as possible. If we determine it is in our best interest to proceed with the assumption of the BIA OJS Criminal Investigations program through submission of a contract proposal, we will submit the required documents and authorizing resolution in accordance with the requirements stipulated within the applicable laws and regulations accordingly.

Respectfully,

Rynalea Peña, President  
Northern Cheyenne Tribe

7/20/2020  
Date

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

**BUREAU OF INDIAN AFFAIRS  
PUBLIC LAW 93-638, AS AMENDED**

**INDIAN SELF DETERMINATION ACT  
BIA OJS CONTRACT PROPOSAL**

- (a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

Northern Cheyenne Tribe

P.O. Box 128, Lame Deer, MT 59043

(406) 477-6284

- (b) If the tribal organization is not an Indian tribe, provide the following:

(1) A copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.). N/A

(2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.  
N/A

- (c) The full name(s) of the Indian tribe(s) proposed to be served.

Northern Cheyenne Tribe, in addition to other members of Federally Recognized Tribes that are residents of the Northern Cheyenne Reservation.

- (d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

Northern Cheyenne Tribal Council Resolution No. DOI-118 (2020) is in Attachment A

The Resolution approves the submission of a proposal to assume responsibility for the Criminal Investigation Unit including its support staff from the Bureau of Indian Affairs under P.L. 93-638.

(1) If the Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. (No resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.)

N/A

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, provide a reference to that resolution.

Cheyenne tribal members and other members of federally recognized tribes that reside on the Northern Cheyenne reservation.

- (3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

The Northern Cheyenne Tribe proposed to contract the functions of criminal investigations and support staff from the Bureau of Indian Affairs. Division of Law Enforcement and those services related to criminal investigations under the Office of Justice Services. The request includes District V, Rocky Mountain Regional Office and the Central Office in Washington D.C. as applicable.

- (4) A description of the proposed program standards.

Described in Scope of Work.

- (5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency

The Northern Cheyenne Tribe will comply with the financial and reporting requirements as required in P.L. 93-638. Financial statements will be submitted quarterly. An annual report shall be submitted at the end of the fiscal year.

- (6) If redesign, attached a brief description of any proposed *redesign* of the programs, services, functions, or activities to be contracted.

N/A

- (7) Minimum staff qualifications proposed by the Indian tribe or tribal organization, if any. Attachment C.

Organizational Chart included in Attachment C.

See minimum staff qualifications in the attached position descriptions. The Investigative staff requirements will be commensurate with qualifications as currently required by the Bureau of Indian Affairs – Office of Justice Services.

- (8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in 25 CFR, Chapter V, Part 900, Subpart F, subject to any waiver that may be granted under 25 CFR, Chapter V, Part 900, Subpart K.

The Northern Cheyenne Tribe meets the minimum procurement, property and financial management standards.

Northern Cheyenne Tribe – Procurement and Purchasing Manual



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

**SEP 11 2020**

Honorable Rynalea Pena  
President, Northern Cheyenne Tribe  
P.O. Box 128  
Lame Deer, Montana 59043

Dear President Pena:

The Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) has completed initial review of the Northern Cheyenne Tribe's ("Tribe") initial self-determination contract proposal to assume operation of the Division of Drug Enforcement (DDE) and Criminal Investigations (CI) functions pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended. The initial proposal documents were received via hand delivery to the BIA OJS District V Office by Mr. John Grinsell on August 19, 2020, for review and processing in accordance with the ISDEAA Title I regulations at 25 C.F.R. § 900.

Upon receipt of a contract proposal, BIA OJS must review the proposal for completeness and notify the Tribe in writing of any missing items required by 25 C.F.R. § 900.8 and request that the items be submitted within 15 days of receipt of the notification... As submitted, the Tribe's contract proposal is missing several items. Thus, in accordance with 25 C.F.R. § 900.15, please correct, submit or provide clarification for the following items:

1. The Tribe's proposed contract includes a budget request for funding direct operation of the CI program and the DDE Program in the amount of **\$1,198,823**. That amount reflects funding for both programs for an entire Fiscal Year (e.g., FY 2021) or 12 months of salary costs for eight (8) positions, equipment, materials and supplies, travel, sub-contracts, vehicle/maintenance, and training. The DDE Program is a central office function which is ineligible for contracting.<sup>1</sup> A request to contract a non-contractible program, function, service or activity (PFSA) is a matter that invokes declination or partial declination of your proposal. In accordance with the BIA OJS FY2020 base funding allocation (Secretarial level amount), the full-year funding allocation for the CI program for the Northern Cheyenne Tribe is **\$203,846**.

***Action required: Submit a revised proposal that includes a request to contract only the CI program, with a revised budget and funding request for \$203,846. Include an itemized budget to identify planned use of funding for personnel/fringe benefits and other associated costs to carry out the CI PFSA.***

---

<sup>1</sup> P.L. 116-94, 133 Stat. 2534, at \*2701



# NORTHERN CHEYENNE TRIBE

## ADMINISTRATION

P.O. Box 128  
LAME DEER, MONTANA 59043  
(406) 477-6284  
FAX (406) 477-6210



Date September 17, 2020

Lenora Nioce, Special Agent in Charge  
BIA OJS District V Office  
2021 4<sup>th</sup> Avenue North, Suite 406  
Billings, MT 59101

Dear Special Agent in Charge:

This letter is officially requesting technical assistance as authorized in 25 U.S.C. §5322 (d) to assist the Northern Cheyenne Tribe to develop a new self-determination contract for Investigative Services. We request a meeting with your office to assist the Tribe to overcome the four (4) specific items in your letter of September 11, 2020.

Please contact us soon as possible for a meeting whether it's an in-person dialogue or on-line meeting. We look forward to hearing from you soon, as you have requested, a written response with clarifications no later than Monday, September 28, 2020.

Sincerely,

Rynalea Pena, President  
Northern Cheyenne Tribe

cc: Leslie Gourneau, Awarding Official, BIA Rocky Mountain Region  
Alonzo Spang, Acting Superintendent, Northern Cheyenne Agency

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EXHIBIT 4



# NORTHERN CHEYENNE TRIBE

## ADMINISTRATION

P.O. Box 128  
LAME DEER, MONTANA 59043  
(406) 477-6284  
FAX (406) 477-6210



October 9, 2020

Lenora Nioce, Special Agent in Charge  
BIA OJS District V Office  
2021 4<sup>th</sup> Avenue North, Suite 406  
Billings, MT 59101

This responds to your September 11, 2020 letter. As you can see from the information below, your failure to comply with the Tribe's requests and violations of the Indian Self-Determination and Education Assistance Act are jeopardizing the Tribe's opportunity to be awarded the criminal investigation contract. We request that you provide your immediate attention to these matters.

The numbering below corresponds to the numbering in your September 11 letter.

1. You "require" the Tribe to resubmit its proposal within the budget of \$203,846. You claim that amount is the annual funding for the criminal investigation (CI) program for Northern Cheyenne. The Tribe proposed a larger budget based on the information available to it at the time, which was very limited because you failed to provide budgetary information about the CI program. By letter dated July 20, 2020, the Tribe specifically requested the following information about the BIA OJS program serving Northern Cheyenne to assist with its preparation of its proposal: budgetary information, including budgets for FY 2020 and 2021; the current FTEs and copies of position descriptions; a description of all services provided; and the equipment and supplies available to the program. We hereby re-request all of that. The most important information we need are the allocation tables for District V Northern Cheyenne Agency for all of law enforcement and criminal investigation and the organizational chart of personnel. We cannot provide a revised budget until we get this information. BIA is required to provide this information to the Tribe under 25 CFR §§ 900.3, 900.7, and 900.8, and other applicable law.

2. Item #2 asks for information that is not required. 25 CFR § 900.8 lists the information that is required from a tribe in a proposal to contract. 25 CFR § 900.9 provides that BIA may not require a tribe to submit any other information beyond that identified in 25 CFR § 900.8.

First, you "require" that the Tribe name the individuals who will be hired under the contract. This is not required by applicable regulations. The Tribe will hire people once the contract is awarded. 25 CFR § 900.8 does not list naming the individuals who will be hired. Please confirm in writing that you do not require this information to award the contract.

Second, you "require" a "detailed plan" for background investigations and adjudications and basic and mandatory training requirements as provided in applicable law and as provided in a

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memorandum of understanding. The Tribe is not required to provide this information either. 25 CFR § 900.8 and 900.9. The Tribe is required by § 900.8 to affirm it “will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.” The Tribe hereby affirms that it will do so. If you think this statement does not meet the requirements of applicable law to award the contract, please advise in writing.

In sum, once the contract is awarded to the Tribe, it will comply with all applicable legal requirements including in its hiring and training practices. Item #2 puts the “cart before the horse” in violation of ISDEAA and attempts to apply a higher standard to the Tribe than BIA applies to its own operations.

3. You “require” documentation to clarify that that Tribe’s criminal investigators will be required to request and be issued a SLEC before assuming CI duties, will be supervised by an individual appropriately trained in criminal investigation techniques and protocols for information sharing, referrals, and tracking of cases, dispatch protocols, and the handling of evidence. We hereby confirm that the Tribe will carry out the above.

One question: does the CI need to have a SLEC in place before engaging in activities to enforce Tribal rather than United States law?

Also, please provide the agreement cited in footnotes 2 and 3 of the September 11 letter, as you promised to do on our September 28 technical assistance phone call. Finally, please provide an agreement BIA-OJS has used to cover the requirements set forth in the second full paragraph of page 3 of your letter. We understand that such an agreement already exists.

4. Pursuant to 25 CFR 900.7, we hereby request \$50,000 for pre-award costs. These funds will be used to staff to begin to build the CI program, including job advertising, developing systems, and any work to complete this contracting process.

**Future Communication.** Finally, on our September 28 call, you promised that you would copy others when corresponding with me on this matter. We appreciate this courtesy which is key to our operational success as I am busy with many responsibilities as Tribal President. Accordingly, please include the following people on any email, letter or other correspondence to me, including without limitation any response to this letter, and we prefer that letters be emailed:

Sincerely,



Rynalea Peña, President  
Northern Cheyenne Tribe

Tribal Administrator William Walksalong [william.walksalong@cheyennenation.com](mailto:william.walksalong@cheyennenation.com)

Law Enforcement, John Grinsell [john.grinsell@cheyennenation.com](mailto:john.grinsell@cheyennenation.com)

Tribal Attorney, Brian Chestnut [bchestnut@ziontzchestnut.com](mailto:bchestnut@ziontzchestnut.com)

cc: Alonzo Spang, Acting Superintendent, Northern Cheyenne Agency  
Leslie Gourneau, Awarding Official, Rocky Mountain Regional Office  
Northern Cheyenne Tribal Council  
William Walksalong, Tribal Administrator  
John Grinsell, Law Enforcement  
Brian Chestnut, attorney



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

NOV 13 2020

Honorable Rynalea Pena  
President, Northern Cheyenne Tribe  
P.O. Box 128  
Lame Deer, Montana 59043

Dear President Pena:

This letter responds to the Northern Cheyenne Tribe's (Tribe or NCT) October 9, 2020 letter to the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) responding to deficiencies or missing items in the Tribe's proposal to assume the BIA OJS Criminal Investigation (CI) program under the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638. Your letter discusses three general areas: the funding amount, the BIA OJS requests for information on the Tribe's ability to perform the program upon award, and federal commissioning. We will discuss these issues in turn below; however, please be advised that the current deadline for BIA OJS to approve or decline the Tribe's proposal is November 17, 2020, unless the Tribe grants additional time for the BIA OJS to consider the proposal.

The Funding Amount

The ISDEAA requires that the Department provide funding which is "*not less than [the] Secretary would have otherwise provided for the operation of the program.*" 25 U.S.C. § 5325(a)(1). As our September 11 letter stated, the funding amount for the CI program on the Northern Cheyenne Indian Reservation is \$203,486. In response to your requests for additional information, enclosed please find FY2020 program expenditure and full time employee (FTE) salary table, historical funding amounts for NCT law enforcement and CI functions (FY2016-FY2020), copies of applicable position descriptions, an organizational chart under the current BIA OJS Branch of Criminal Investigations (BCI), and a list of property currently being utilized to carry out the direct CI program operations by the BCI agents servicing the NCT to assist you with preparation of the necessary revisions to the budget request included with Tribe's initial contract proposal submission received on August 19, 2020.

If the Tribe does not submit a revised budget that is equal to or less than \$203,486 prior to the current deadline of November 17, 2020, the BIA OJS will have to partially decline the amount of the Tribe's proposed funding level in excess of \$203,486 under 25 C.F.R. § 900.22 (d): "[T]he amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined by [25 U.S.C. § 5325(a)(1)]."

Background Investigations and Training Certifications for the Tribe's Law Enforcement Officers

The Tribe objects to providing background investigation materials and training certificates for its law enforcement staff, as it believes such action is more than 25 C.F.R. § 900.8 requires. Instead, the Tribe now states that it will hire appropriate staff following the award of the contract, at which time it says it will comply with all applicable legal requirements for hiring and training practices.

The BIA OJS has requested background investigation materials and training certificates to avoid a potential declination issue under 25 U.S.C. § 5325(a)(2)(A) and 25 C.F.R. § 900.22 (a): "*The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.*" As an essential service for public safety, the CI program cannot have a lapse in operations while transitioning to Tribal management. The lack of qualified staff to carry out this function immediately upon award of the contract would endanger the health and safety of all residents and visitors to the Indian Country of the Northern Cheyenne Tribe, and would require the BIA OJS to reassume operation of the program under 25 C.F.R. § 900.247. As such, failing to provide documentation to demonstrate that the Tribe's law enforcement CI staff are currently qualified and trained to perform the function will compel BIA OJS to decline the proposal under 25 C.F.R. § 900.22 (a): "*The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.*" The minimum standards for background investigations and law enforcement training are discussed at length in our September 11 letter, and in the attached [doc].

Federal Commissioning

We appreciate the Tribe's agreement to comply with the requirement that all criminal investigators be supervised only by law enforcement personnel. However, we reiterate the request from our September 11 letter for a revised Statement of Work (SOW) providing that all criminal investigators employed by the Tribe will be adequately supervised by an individual appropriately trained in criminal investigative techniques, and protocols for information sharing, referrals and tracking cases, dispatch protocols, and the handling of evidence. Per your request, we have attached a sample agreement and sample scope of work language.

The Tribe's letter also asks whether a tribal criminal investigator would require a commission under 25 U.S.C. § 2804 to enforce tribal laws. A tribal criminal investigator is not required to hold a commission under 25 U.S.C. § 2804 to enforce tribal laws. However, to carry out the CI program tribal criminal investigators must be able to present cases for federal prosecution. Currently the only mechanism to guarantee that NCT criminal investigators have the ability to present cases to the United States Attorney for prosecution is commissioning under 25 U.S.C. § 2804.

Please address the issues detailed above prior to the current deadline of November 17, 2020, or the BIA OJS will have to decline the Tribe's proposal under 25 C.F.R. § 900.22 (a) and (d) — "*The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory,*" and "[T]he amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined by [25 U.S.C. § 5325(a)(1)]." If the Tribe would like more time to work through the pending issues with BIA

OJS assistance, the Tribe may elect to extend the deadline for BIA OJS, as 25 C.F.R. § 900.17 provides.

If you would like to discuss these issues further, please feel free to contact me at the BIA OJS District V Office at (406) 657-5936, via email at [lenora.nioce@bia.gov](mailto:lenora.nioce@bia.gov), or via mail at 2021 4<sup>th</sup> Avenue North, Suite 406, Billings, MT 59101.

Sincerely,



Lenora Nioce  
Special Agent in Charge/Approving Official

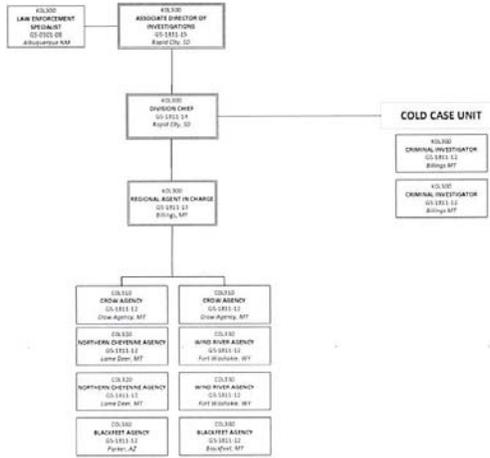
Enclosures:

1. BIA OJS BCI Organizational Chart for Billings Area
2. BIA OJS Northern Cheyenne CI Property List
3. FY-20 Program Expenditure and FTE Salary Table
4. BIA OJS NCT Historical Funding Amount(s) for LE/CI Programs (5 years)
5. CI Position Description(s)

CC: Northern Cheyenne Tribal Council  
Alonzo Spang, Acting Superintendent, BIA Northern Cheyenne Agency  
Rose St. Goddard/Leslie Gourneau, Self Determination Office, BIA Rocky Mtn Region



# OFFICE OF JUSTICE SERVICES Branch of Criminal Investigations Unit



CRIMINAL INVESTIGATIONS PROPERTY - NORTHERN CHEYENNE CIU							
Inventory Number	Description/Location	Manufacturer Name	Serial Number	Equipment Condition	Inventory Complete Y/N	Comments	
<b>SHOTGUNS</b>							
950727	870 Pump Shotgun	Remington	RS49123U	Good	Y	Assigned to agent	
	870 Pump Shotgun/NCA Armory	Remington	RS2064T	Good	Y	Unassigned	
<b>RIFLES</b>							
1243819	LAR-15 Rifle	Rock River Arms	CM277200	Good	Y	Assigned to agent	
1243801	LAR-15 Rifle/NCA Armory	Rock River Arms	CM277181	Good	Y	Assigned once Agent reports to duty	
<b>GLOCK 17M/19M FIREARMS</b>							
1300070	9mm Pistol	Glock 17M	ADNB232	Good	Y	Assigned to agent	
	9mm Pistol/NCA Armory	Glock 17M	ADNB448	Good	Y	Assigned once Agent reports to duty	
<b>GLOCK G43 9MM FIREARMS</b>							
1291804	9mm Pistol	G43 9MM	ADSB836	Good	Y	Assigned to agent	
1241835	9mm Pistol/NCA Armory	G43 9MM	ADSD419	Good	Y	Assigned once Agent reports to duty	
<b>ECD</b>							
None							
<b>BALLISTIC VESTS</b>							
126604	Soft Body Armor	Armor Express Halo 3A	1410152660	Good	Y	Assigned to agent	
	Soft Body Armor	Armor Express Halo 3A				Not ordered yet	
<b>UNMARKED INVESTIGATIONS VEHICLES</b>							
1241285	1455700 - SUV Tahoe	2019 Chevrolet Tahoe	1GNSKEEC6KR128185	Good	Y	Assigned to agent	
1026261	1454523 - Silverado Truck/NCA	2015 Chevrolet Silverado	3GCURPEC1FG466001	Good	Y	Assigned once Agent reports to duty	
<b>UTILITY EQUIPMENT</b>							
None							
<b>LAPTOPS</b>							
AC00030010	Issued to BIA Special Agent	Dell Latitude E7470	F0VWVD2	Good	Y	Assigned to agent	
AC00030023	Issued to BIA Special Agent	Dell Latitude E7470	B201WD2	Good	Y	Assigned once agent reports to duty	
<b>IPADS</b>							
none							
<b>PORTABLE RADIOS</b>							
1212460	Portable Radio	Motorola APX 8000	579CTT8327	Good	Y	Assigned to agent	
1119090	Portable Radio	Motorola APX 7000	655CLP0643	Good	Y	Assigned once Agent reports to duty	
<b>VEHICLE RADIOS</b>							
	1455700 SUV	2019 CHEVROLET TAHOE	1GNSKEEC6KR128185	Good	Y	Installed in GOV	
	1454523 Truck	2015 CHEVROLET SILVERADO 1500	3GCURPEC1FG466001	Good	Y	Installed in GOV	
<b>DIGITAL CAMERAS</b>							
n/a	Digital SLR D3300	Nikon	3021347	Good	Y	Assigned to agent	
n/a	Digital SLR	Canon	620326779	Good	Y	Assigned once agent reports to duty	
<b>CTI - EVIDENCE CONTROL ROOM</b>							
None							
						CIU Uses Patrol Division's ECR	

CT2 - EVIDENCE CONTROL ROOM						
None						CIU Uses Patrol Division's ECR
ROOM 1 - SPECIAL AGENT OFFICE						
	Brown Office 4 dr Desk	HON	MTPRGP	Good	Y	Unassigned
	Laserjet Printer	HP	CNF8G3LML6	Good	Y	Unassigned
K00053213	Desktop Computer	Dell	5082586130	Good	Y	Unassigned
	Computer Monitor	Dell	CN-0KHONG-QDC00-78A-24CI-A01	Good	Y	Unassigned
	Computer Monitor	Dell	CN-0KHONG-QDC00-78A-24TI-A01	Good	Y	Unassigned
	Keyboard	Dell	DPN026XGK	Good	Y	Unassigned
	Black Chair	unknown	436534-24625345	Good	Y	Unassigned
ROOM 2 - SPECIAL AGENT OFFICE						
	Printer/Scanner	Brother MFC-93330CDW	V63480D7J139560	Good	Y	Assigned to agent
	Keyboard	Dell	M/N-KB813T	Good	Y	Assigned to agent
	Monitor	LG	27MP33	Good	Y	Assigned to agent
	Monitor	Acer	63602660342	Good	Y	Assigned to agent
	Brown 4dr Desk	HON H10585R	HYDYZ	Good	Y	Assigned to agent
	4 Drawer Locking	Firking FL2007130212	872754	Good	Y	Assigned to agent
	Black Office Chair	Unknown	LE23VAP	Good	Y	Assigned to agent

<b>NORTHERN CHEYENNE BCI - Budgetary Data - 2020</b>		
	<b>Investigations</b>	<b>A0J303030</b>
		<b>\$203,846</b>
<b>Expenditures</b>	<b>Commitment Item</b>	<b>2020</b>
	111A00 : FTP Regular Civilian	\$ -105,909.01
	115A00 : Overtime	\$ -2,019.78
	115F00 : Paid Holidays Worked	\$ -1,161.36
	115J00 : Premium Pay-Standby	\$ -26,478.01
	115V00 : Nightwork Diffrential	\$ -8.82
	121A00 : Contribution-Medicar	\$ -1,871.77
	121B00 : Contributions	\$ -8,003.50
	121E00 : Contrib.-Thrift Plan	\$ -1,323.88
	121F00 : Contrib.-Thrift (5%)	\$ -5,193.08
	121K00 : Contributions	\$ -44,032.99
	121T00 : Contrib-Life Insuran	\$ -280.19
	121W00 : Contributions-Health	\$ -12,683.14
	211B00 : Non-Foreign TMC	\$ -59.27
	211D00 : Non-Foreign Emp	\$ -751.10
	211E00 : NForgn Emp M&EI	\$ -1,806.00
	233D00 : ComCom - Long D	\$ -5,037.12
	256M00 : Med&Health Care Serv	\$ -4,500.00
	257D00 : Repair&Maint-Vehicle	\$ -2,177.56
	261A00 : Office Suppl&Matrial	\$ -289.00
	265C00 : EmployeeClothing&Sup	\$ -1,600.00
	269F00 : Fuel-MotrVeh Aircrft	\$ -7,185.32
	312E00 : Non-Cap-Info Tech Eq	\$ -3,810.00
	312F00 : Non-Cap-Info Tech Eq	\$ -1,552.00
<b>Investigations</b>	<b>TOTAL EXPENDITURES:</b>	<b>-\$237,733</b>
<b>AGENCY</b>	<b>FY 2020</b>	
	FUNDING ALLOCATIONS	\$203,846
	FUNDING EXPENDITURES	-\$237,733
	FUNDING OVERAGES/SHORTAGES	-\$33,887

<b>NORTHERN CHEYENNE BCI</b>			
	<b>GRADE/SERIES</b>	<b>TITLE</b>	<b>SALARY</b>
**	GS-1811-12/10	Criminal Investigator	\$ 124,676.00
**	GS-1811-12/05	Criminal Investigator	\$ 108,690.00
		<b>TOTAL SALARY COST</b>	<b>\$ 233,366.00</b>

- \*\* Salaries include:
- \* \$25% Law Enforcement Availabilty Pay for 24/7 On Call Investigation Responsibilities.
  - \* LEO Locality Pay at 15.95% for Locality Pay Area of Rest of US

NORTHERN CHEYENNE - BIA OJS FUNDING								
FUNDS CENTER	FUNDS CENTER	FBMS FUNCTIONAL AREA	FBMS FUNCTIONAL AREA NAME	2016	2017	2018	2019	2020
AAKLC03200	N. CHEYENNE	A0J301010.999900	PROGRAM MANAGEMENT	\$343,179	\$356,536	\$321,049	\$321,049	\$321,049
AAKLC03200	N. CHEYENNE	A0J302020.999900	UNIFORM POLICE	\$1,175,333	\$1,221,077	\$1,410,074	\$1,410,074	\$1,410,074
AAKLC03200	N. CHEYENNE	A0J303030.999900	INVESTIGATIONS	\$193,757	\$201,298	\$203,846	\$203,846	\$203,846
AAKLC03200	N. CHEYENNE	A0J308080.999900	TELECOMMUNICATIONS	\$257,708	\$267,738	\$271,127	\$271,127	\$271,127
				<b>\$1,969,977</b>	<b>\$2,046,649</b>	<b>\$2,206,096</b>	<b>\$2,206,096</b>	<b>\$2,206,096</b>

CRIMINAL INVESTIGATOR  
GS-1811-12

I. INTRODUCTION

The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibilities to protect and improve the trust assets of American Indian, Indian Tribes, and Alaska Natives. We will accomplish this through the delivery of quality services, and maintaining government-to-government relationships within the spirit of Indian self-determination. The individual employee contributes to the overall mission by performing duties with integrity, fairness and timeliness; always remembering the end product must be a quality service.

The mission of the Office of Law Enforcement Services (OLES) is to uphold the constitutional sovereignty and customs of Tribes, with protecting the rights of all people; to protect life and property; ensure employment suitability and to promote and preserve peace within Indian Country. The OLES develops standards, policy and procedures for Bureau-wide implementation, operates the Indian Police Academy, provides uniformed police and detention services, and monitors Tribal contracted law enforcement programs. Conducts inspections and evaluations of Bureau and Tribal law enforcement programs, conducts internal investigations of misconduct by law enforcement officers, and provides emergency tactical response teams to reservations requiring assistance, or threatened with disruptions or civil disorders. Conducts criminal investigations into criminal violations committed on reservations, involving Federal, State, county, local, and Tribal codes and maintains an automated Criminal Justice Information System. The OLES has law enforcement responsibilities for crimes committed on, or involving, Indian Country. This includes major Federal crimes and State crimes assimilated into the Federal statutes under Title 18 U.S.C. 13, and tribal laws.

The incumbent contributes to this mission by performing his or her assigned job responsibilities in a manner consistent with total quality management principles that promote peak performance and services delivery to our client Indian population. The incumbent is a commissioned law enforcement officer under 25 U.S.C. 2803, and assigned to act on behalf of the Director, OLES.

II. MAJOR DUTIES AND RESPONSIBILITIES

Performs the full range of in-depth investigative duties requiring comprehensive law enforcement knowledge and skills involving a high degree of independent judgement, immediate decisions and a high degree of initiative and resourcefulness. The employee may be assigned to other reservations in the United States, both as a primary duty station and for emergencies, major civil disturbances and other criminal investigations.

Duties include the following: (30%)

-Coordinates and conducts the investigation of major and/or sensitive criminal activity occurring on or impacting Indian country which may involve issues of Congressional, Secretarial or national media interest or may have national implications. Participates in assignments involving large teams of investigators and officers, including state, local, and other federal agencies requiring major operations at critical stages of investigations, involved in multiple or around the clock surveillance, major interceptions of communications, search warrant executions, illegal gambling investigations, and other types of investigative activities. Some investigations involve subjects/persons that are the subject of major news media therefore, any investigation is likely to result in publicity that would to some degree cast suspicion on the reputation of the subject, prejudice, the investigation case in court, or complicate subsequent administrative decisions. Prepares and/or reviews and approves reports of investigations to ensure they are prepared in a clear concise, logical and impartial manner for submission to the Director, Office of Law Enforcement Services or to the appropriate United States Attorney, Tribal or state and local prosecutors office.

-Gathers information, determines interrelationships of facts/evidence involving high level of criminal activity. Determines the relevancy of evidence, analyzes the facts, statements, crime scene and overall circumstances surrounding the investigation and initiates contact with local prosecuting offices to coordinate and plan for securing of arrest and search warrants, affidavits, and other court orders. Investigations are conducted with little or no guidance and adhering to court cases, law enforcement techniques and established investigative protocol.

-Conducts or directs teams on the investigation of a number of complex and varied matters, in a wide range of locations, involving both geographically isolated and densely populated areas within the jurisdiction outlined in 25 U.S.C. Chapter 30. These investigations may be extremely sensitive, have high visibility by attracting public/political attention, and may be further complicated by possible tribal or political interference and/or time lapse. The employee routinely works these type cases, during emergency situations or when multiple agencies are involved.

-Conducts investigations of suspected criminal activity related to gaming or gambling when principals involved may not be the actual owner or beneficiary. Conducts investigations into legitimate businesses operating in Indian country which are also suspected of illegal activities, yet are not investigated by local agencies due to intimidation, political influence, family ties, or other reasons. In some cases, these operations may have no other connection with the local community other than providing the service. An example of this activity could include retail operation on the reservation that provides legitimate goods and/or services, yet also provides alcohol, cigarettes, weapons or other contraband on the side.

-Incumbent conducts the full range of complex criminal investigations relating to major Federal crimes on assigned Indian reservation(s) and trust lands: (70%)

-Conducts investigations which involve persons who may be operating throughout a reservation or several reservations in one or several states using fictitious names and/or legitimate businesses to cover illegal activities. The principals may be persons of local, regional and national economic,

social or political prominence. Violations or alleged violations of 18 U.S.C., Sections 1152 and 1153, including the major crimes of murder, manslaughter, criminal knowledge, arson, robbery, larceny, assault with the intent to commit murder, assault resulting in serious bodily injury, assault with a dangerous weapon, rape, assault with the intent to commit rape, incest, burglary and kidnapping.

-Investigates, apprehends, arrests and detains all persons suspected of violations of Federal, state, tribal, and local laws, testifies at hearings and trials in various jurisdictions, secures search and arrest warrants through processing of affidavit and searches scenes of crimes. Seizes, secures, and maintains proper chain of custody for evidence of crimes. Interviews suspects and witnesses, secures and corroborates testimony, manages and directs movement and security of prisoners, prepares complex case reports of investigation, activity reports, and statistical reports as required.

-Performs surveillance of sites and suspects, often for extended periods of time, to obtain evidence, establish probable cause, or to link multiple suspects and events to probable criminal activity. Develops and maintains intelligence data on individuals and organizations known or suspected to be involved in criminal activity. Recruits and cultivates individuals for use as informants or decoys in support of criminal investigations. Performs extensive analysis to connect activities, illegal goods, individuals, or other evidence from seemingly unrelated activities. In addition to surveillance, this may be accomplished through examination of evidence, in-depth interviews, informants, document reviews, or other means.

-Performs undercover assignments, developing a complex and supportable cover story, to make singular or multiple purchases of evidence or contraband. Total discretion is required while undertaking these operations, not only for success in obtaining evidence and/or convictions, but also for the investigator's safety and survival. These operations are extremely sensitive, therefore public knowledge of the details of each operation must be non-existent, and the amount of details revealed after any operation must be extremely limited to protect internal procedures.

-Investigates and evaluates modern trends and developments in law enforcement techniques, procedures, administration, prevention and control of juvenile delinquency.

-Makes critical decisions during execution of search and arrest warrants and other situations involving the application of either lethal or non-lethal force or techniques.

-Provides technical assistant to Tribal criminal investigators.

-Serves as primary professional contact between the BIA Office of Law Enforcement Services and Tribal law enforcement officials. Maintains professional liaison with tribal government leaders and law enforcement officials. Provides technical assistance to other criminal investigators, police officers and detention officers. Conducts oversight/monitoring of the Tribe's law enforcement and detention services contract. Processes BIA Deputy Special Officer Commissions, training applications and any other duties to further strengthen working relationship between the Agency law enforcement and the BIA.

### III. EVALUATION FACTORS

#### Factor 1 - Knowledge Required by the Position

Knowledge of the organization of the Bureau of Indian Affairs, its relationship to other agencies, to the tribes and to the general public, and a knowledge of Indian reservations throughout the United States, their locations, boundaries, and tribal codes.

Extensive knowledge of law enforcement procedures and techniques, including the investigation of crimes, Federal Rules of Criminal Procedure, police conduct, courtroom etiquette, rules of evidence, and rules of testimony. Skill in the execution of search and arrest warrants.

Detailed and extensive knowledge of Federal, state and tribal court decisions that impact on law enforcement on Indian lands, especially decisions involving jurisdiction and authority questions.

Knowledge of the Constitutional protection afforded individuals, including rules governing search and seizure, arrests and questioning individuals.

Skill in recognizing, collecting and preserving physical evidence and maintaining a chain of custody; and the ability to distinguish between relevant and admissible or inadmissible information and evidence.

Skill in developing continuing sources of information, relating to a variety of conditions affecting criminal activities, such as routes and means of transportation, area political conditions, economic pressures, population changes, availability and sources of fraudulent documents, and other factors which may have an effect on illegal activity.

Skill in collecting, assembling and presenting pertinent facts both orally and in writing, and the ability to prepare clear and concise reports.

Knowledge of methods and patterns of criminal operations and availability and use of modern detection devices and laboratory services.

Skill in the use of firearms.

Knowledge of computer applications and information management resources to track and assist in the conduct of criminal investigations.

#### Factor 2 - Supervisory Controls

Operates under the direct supervision of the Chief of Police on daily assignments and under designee on other assignment. The incumbent typically has a continuing responsibility in area of work. The incumbent plans and carries out the work independently establishing priorities, setting deadlines, determining the scope and intensity of his/her efforts based on the needs and objectives of the Service, the limitations imposed by statute and precedent, the resources available and the constraints imposed by time, geographical area to be covered and alien activity. Decisions and

recommendations made typically are accepted as authoritative statements of fact. In most instances, the work of the incumbent is performed at locations or in situations that do not lend themselves to supervisory oversight; consequently incumbent must resolve problems, even those that involve deviations from established procedures or instructions, unfamiliar situations or unusual requirements, on own initiative. Completed work products, usually technical reports, digest of situations encountered, informative abstracts or letters are accepted as technically sound. Unusual or controversial findings are reviewed primarily to ascertain if they are a potential basis for modifications of operating instructions, procedures or program emphases.

#### Factor 3 - Guidelines

The principal guidelines are the Department and Bureau manuals, code of Federal Regulations, Federal laws and regulations, especially Title 18 United States Code, Federal Rules of criminal procedure, state, local and tribal enforcement codes, and established law enforcement procedures and practices. While parts of these guidelines require little interpretation, others often require considerable interpretation and adaptation. Emergency and unique situations however, frequently, require independent interpretation of the guidelines in order to be responsive to emergencies or unusual situations. Some of the guidelines are not entirely applicable to the objectives and work assignments and often require the use of mature judgement interpreting and adapting the guidelines to quickly developing situations in the work.

#### Factor 4 - Complexity

Assignments involve the most complicated and perplexing law enforcement cases faced by federal law enforcement officials. Complicating factors which must be analyzed in each case are jurisdictional issues; reservation to reservation criminal connections; reservation connections, to outside criminal networks; coordination of several enforcement jurisdictions for investigative purposes, collection of and evaluation of intelligence data collected by several agencies and the extreme distances involved in such investigation and coordination.

Many cases will involve complex investigations of subjects and organizations from several tribes, counties or states. Much of the work is done in isolated areas, which lack adequate communications and other modern conveniences. Therefore, there is the complicating factor of having to work with fragmentary and cold evidence and where jurisdiction is complicated and the relationships of jurisdiction and persons or agencies are difficult to establish. The incumbent must recognize, isolate and be prepared to make sound decisions and recommendations and crucial judgments based on individual evaluations of the intrinsic relationships or operational intelligence information to strategic informational considerations.

#### Factor 5 - Scope and Effect

The investigator's actions prevent unauthorized or criminal activities in such areas as the deterrence of trafficking of narcotics, contraband goods, weapons, or government sensitive information and equipment, fraudulent or illegal schemes, or other law enforcement related areas of concern involving criminal activity against the government or individuals. The incumbent promotes the detection and prevention of crime, and affects the apprehension and/or expulsion of criminals or

criminal activities. Effective accomplishment of assigned duties has considerable impact on the overall intervention, prevention, and reduction of criminal and unlawful activities throughout the reservation(s). Many investigations and the evidence involved are cross-cultural and involve sovereign governments or nations. Results of these investigations may affect local Federal and tribal government officials or law enforcement officials. Failure to carry out timely and thorough investigative work could result in the loss of prosecutorial opportunities for convictions involving major crimes.

#### Factor 6 - Personal Contacts

Contacts are with high ranking officials from both within and outside the government. These are normally in highly unstructured settings and are required in order to complete complex investigations or to support the program. Contacts include victims, witnesses or suspects, leaders of various Indian tribes, representatives from major Federal law enforcement organizations, Chiefs of Police, Sheriffs, members of Congressional staff, United States Attorneys, intermediate organizations, and private entities and corporations.

#### Factor 7 - Purpose of Contacts

Purpose of contacts is to detain, control or interrogate suspected violators of the law, or to justify, negotiate or settle matters involving significant or controversial issues. Involves active participation in interviews, interrogations, conferences, hearings, and meetings which involve problems of considerable importance. Persons contacted often have differing viewpoints or objectives. Suspects interviewed are frequently uncooperative, hostile, afraid, evasive or dangerous. This requires the incumbent to develop a common core of understanding and achieve a satisfactory solution by convincing them, arriving at a compromise, or develop suitable alternatives.

#### Factor 8 - Physical Demands

Duties are primarily active law enforcement functions. The possibility of physical attack is quite present in field operations. The incumbent must be in, maintain, and periodically demonstrate excellent physical condition. The employee must be certified as proficient in the use of, periodically requalify with, and carry firearms. The incumbent must successfully complete a physical examination and the Physical Efficiency Battery (PEB) on an annual basis or as current BIA policy indicates. The employee must successfully complete the basic criminal investigator training program conducted by the Federal Law Enforcement Training Center, or an equivalent course approved by the Commissioner of Indian Affairs.

#### Factor 9 – Work Environment

Work is primarily conducted in an office or field setting. As a law enforcement officer, the incumbent will be exposed to the real risks of physical attack, mob conditions, or similar risks that can result in injury or loss of life. Availability to travel on short notice and under adverse conditions is required.

#### IV. OTHER SIGNIFICANT FACTORS

The incumbent is required to operate a motor vehicle. A current State driver's license is required. Law enforcement personnel are subject to short notice TDY deployment to meet nationwide Indian country law enforcement operation/mission requirements. This position may require frequent travel or long periods away from the normal duty station and may include remote or isolated sites. Based on operational necessity, TDY away from duty station in support of other OLES units requires travel by air

This position is subject to Law Enforcement Availability Pay (LEAP). The employee may be required to work other than normal duty hours, which may include evenings, weekends, and/or holidays and/or overtime. The incumbent is subject to wearing a police uniform when necessary or during exigent circumstances within the criminal jurisdiction of Indian country. The incumbent is subject to drug testing and background investigation.

The employee is responsible for keeping self drug-free, for demonstrating knowledge of agency drug abuse policy and procedures. Must be aware and alert to the symptoms and signs of drug abuse and change in behavior; reports appearances of unusual action to responsible official. Encourages peer discussion groups and outreach to available resources; as appropriate, suggests to the supervisor, improvements to the workplace to enhance a drug-free environment, indicating willingness to help bring about positive change.

CRIMINAL INVESTIGATOR  
GS-1811-11

I. INTRODUCTION

The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibilities to protect and improve the trust assets of American Indian, Indian Tribes, and Alaska Natives. We will accomplish this through the delivery of quality services, and maintaining government-to-government relationships within the spirit of Indian self-determination. The individual employee contributes to the overall mission by performing duties with integrity, fairness and timeliness; always remembering the end product must be a quality service.

The mission of the Office of Law Enforcement Services (OLES) is to uphold the constitutional sovereignty and customs of Tribes, with protecting the rights of all people; to protect life and property; ensure employment suitability and to promote and preserve peace within Indian Country. The OLES develops standards, policy and procedures for Bureau-wide implementation, operates the Indian Police Academy, provides uniformed police and detention services, and monitors Tribal contracted law enforcement programs. Conducts inspections and evaluations of Bureau and Tribal law enforcement programs, conducts internal investigations of misconduct by law enforcement officers, and provides emergency tactical response teams to reservations requiring assistance, or threatened with disruptions or civil disorders. Conducts criminal investigations into criminal violations committed on reservations, involving Federal, State, county, local, and Tribal codes and maintains an automated Criminal Justice Information System. The OLES has law enforcement responsibilities for crimes committed on, or involving, Indian Country. This includes major Federal crimes and State crimes assimilated into the Federal statutes under Title 18 U.S.C. 13, and tribal laws.

The incumbent contributes to this mission by performing his or her assigned job responsibilities in a manner consistent with total quality management principles that promote peak performance and services delivery to our client Indian population. Incumbent is a commissioned law enforcement officer under 25 U.S.C. 2803, and assigned to act on behalf of the Director, OLES.

II. MAJOR DUTIES AND RESPONSIBILITIES

Performs the full range of investigative duties recognized as requiring fully developed law enforcement knowledge and skills involving a high probability for independent judgment, immediate decisions, and a high degree of initiative and resourcefulness. The employee may be assigned to other reservation in the United States, both as a primary duty station and for emergencies, major civil disturbances and other criminal investigations.

Duties include the following:

(100%)

-Conducts investigations, which involve persons who may be operating throughout a reservation or several reservations in one or several states using fictitious names and/or legitimate businesses to cover illegal activities. The principals may be persons of local, regional and national economic, social or political prominence. Violations or alleged violations of 18 U.S.C., Sections 1152 and 1153, including the major crimes of murder, manslaughter, arson, robbery, larceny, assault with the intent to commit murder, assault resulting in serious bodily injury, assault with a dangerous weapon, rape, assault with the intent to commit rape, incest, burglary and kidnapping. Apprehends, arrests and detains all persons suspected of violations of Federal, State, tribal, and local laws. Testifies at hearing and trials in various jurisdictions, secures search and arrest warrants through process of affidavit and searches scenes of crimes. Seizes, secures, and maintains proper chain of custody for evidence of crimes. Interviews suspects and witnesses, secures and corroborates testimony, manages and directs movements and security of prisoners, prepares complex case reports of investigation, activity reports, and statistical reports as required.

-Conducts investigations of a number of complex and varied matters in a wide range of location, involving both geographically isolated and densely populated areas, within Indian country.

-Performs surveillance of site and suspects, often for extended periods of time, to obtain evidence, establish probable cause, or to link multiple suspects and events to probable criminal activity. Recruits and cultivates individuals for use as informants or decoys in support of criminal investigations. Performs extensive analysis to connect activities, illegal goods, individuals, or other evidence from seemingly unrelated activities. In addition to surveillance, this may be accomplished through examination of evidence, in-depth interviews, informants, document reviews, or other means.

-Conducts investigations suspected criminal activity related to gaming or gambling.

-Performs undercover assignments, developing a complex and supportable cover story to make singular or multiple purchases or evidence or contraband. Total discretion is required while undertaking these operations, not only for success in obtaining evidence and/or convictions, but also for the investigator's safety and survival of the investigator.

-Prepares reports of investigation in a clear, concise, logical and impartial manner for submission to the next level supervision for subsequent referral to the appropriate United States Attorney or State, local, or tribal prosecutor's office.

-Investigates and evaluates modern trends and development in law enforcement techniques, procedures, administration, prevention and control of juvenile delinquency. .

-Make critical decisions during executions of search or arrest warrants and other situations involving the application of either lethal or non-lethal force or techniques.

-Provides technical assistance to Tribal criminal investigators.

### III. EVALUATION FACTORS

#### Factor 1 - Knowledge Required by the Position

Knowledge of the organization of the Bureau of Indian Affairs its relationship to other agencies, to life tribes and to the general public, and a knowledge of Indian reservations throughout the United States, their locations, boundaries, and tribal codes.

Extensive knowledge of law enforcement procedures and techniques, including the investigation of crimes, Federal Rules of Criminal Procedure, police conduct, courtroom etiquette, rules of evidence, and rules of testimony. Skill in the execution of search and arrest warrants

Detailed and extensive knowledge of Federal, state and tribal court decision that impact law enforcement on Indian lands, especially decision involving jurisdiction and authority questions. Knowledge of the Constitutional protection afforded individuals including rules governing search and seizure, arrests and questioning individuals.

Skill in recognizing, collecting and preserving physical evidence and maintaining a chain of custody; and the ability to distinguish between relevant and admissible or inadmissible information and evidence.

Skill in developing continuing sources of information, relating to a variety of conditions affecting criminal activities, such as routes and means of transportation, area political conditions, economic pressure, population changes, availability and sources of fraudulent documents, and other factors which may have an effect on illegal activity.

Skill in collecting, assembling and presenting pertinent facts both orally and in writing, and the ability to prepare clear and concise reports.

Knowledge of methods and patterns of criminal operations and availability and use of modern detention devices and laboratory services.

Skill in the use of firearms.

Knowledge of computer applications and information management resources to track and assist in the conduct of criminal investigations.

#### Factor 2 - Supervisory Controls

Operates under the direct supervision of the Chief of Police on daily assignments or under designee on other assignments. The incumbent has responsibility for planning, designing and carrying out investigations, projects or other work independently. When participating on a team, investigator receives directions from the team leader. Results of the work are reviewed for thoroughness and adherence to policy and procedures.

Factor 3 – Guidelines

The principal guidelines are the Department and Bureau manuals, Code of Federal Regulations, Federal laws and regulations, especially Title 18 United State Code, Federal Rules of criminal procedure, state, local and tribal enforcement codes, and established law enforcement procedures and practices. The incumbent interprets or adapts available guidelines that are not completely applicable to the assignment. He/she uses judgment in analyzing and extrapolating from these guidelines to arrive at a sound finding and/or particular course of action.

Factor 4 – Complexity

Assignments involve a wide variety of investigative reviews that require innovative variations of standard investigative methods and techniques. Complicating factors which must be analyzed in each case are jurisdictional issues; reservation to reservation criminal connection; reservation connections to outside criminal networks; coordination of several enforcement jurisdictions for investigative purposes; collection of and evaluation of intelligence data collected by several agencies; and the extreme distances involved in such investigation and coordination.

Factor 5 – Scope and Effect

The incumbent conducts a variety of conventional investigations. Effective accomplishment of assigned duties has considerable impact on the overall intervention, prevention, and reduction of criminal and unlawful activities throughout the reservations(s). Many investigations and the evidence involved are cross-cultural and involve sovereign governments or nations. Results of these investigations may affect local, Federal and tribal governments, officials, or law enforcement officials. Failure to carryout timely and thorough investigative work could result in the loss of prosecutorial opportunities for convictions involving major crimes.

Factor 6 – Personal Contacts

Contacts are with officials from both within and outside the government. These are normally in highly unstructured setting and would include victims, witnesses or suspects, leaders of various Indian tribes, representatives from major Federal law enforcement organizations, Chiefs of Police, Sheriffs, members of congressional staff, United States Attorneys, intermediate organizations, and private entities and corporations to the extent required to complete conventional investigations.

Factor 7 – Purpose of Contacts

Purpose of contacts is to detain, control or interrogate suspected violators of the law, or to justify, negotiate or settle matters involving, significant or controversial issues, involves active participation in interview/interrogations, conference, hearing, and meetings which involve problems or considerable importance. Persons contacted often have differing viewpoints or objectives. Suspects interviewed are frequently uncooperative, hostile, afraid, evasive or dangerous. This requires the incumbent to develop a common core of understanding and achieve a satisfactory solution by convincing them, arriving at a compromise, or develop suitable

alternatives.

#### Factor 8 - Physical Demands

Duties are primarily active law enforcement functions. The possibility of physical attack is quite present in field operations. The incumbent must be in, maintain, and periodically demonstrate excellent physical condition. The employee must be certified as proficient in the use of, periodically requalify with, and carry firearms. The incumbent must successfully complete a physical examination and the Physical Efficiency Battery (PEB) on an annual basis, or as current BIA policy indicates. The employee must successfully complete the basic criminal investigator training program conducted by the Federal Law Enforcement Training Center, or an equivalent course approved by the Commissioner of Indian Affairs.

#### Factor 9 – Work Environment.

Work is primarily conducted in an office or field setting. As a law enforcement officer, the incumbent will be exposed to the real risks of physical attack, mob conditions, or similar risks that can result in injury or loss of life. Availability to travel on short notice and under adverse conditions is required.

#### IV. OTHER SIGNIFICANT FACTORS

The incumbent is required to operate a motor vehicle. A current State driver's license is required. Law enforcement personnel are subject to short notice TDY deployment to meet nationwide Indian country law enforcement operation/mission requirements. This position may require frequent travel or long periods away from the normal duty station and may include remote or isolated sites. Based on operational necessity, TDY away from duty station in support of other OLES units requires travel by air

This position is subject to Law Enforcement Availability Pay (LEAP). The employee may be required to work other than normal duty hours, which may include evenings, weekends, and/or holidays and/or overtime. The incumbent is subject to wearing a police uniform when necessary or during exigent circumstances within the criminal jurisdiction of Indian country. The incumbent is subject to drug testing and background investigation.

The employee is responsible for keeping self drug-free, for demonstrating knowledge of agency drug abuse policy and procedures. Must be aware and alert to the symptoms and signs of drug abuse and change in behavior; reports appearances of unusual action to responsible official. Encourages peer discussion groups and outreach to available resources; as appropriate, suggests to the supervisor, improvements to the workplace to enhance a drug-free environment, indicating willingness to help bring about positive change.

CRIMINAL INVESTIGATOR  
GL-1811-09

I. INTRODUCTION

The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibilities to protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives. We will accomplish this through the delivery of quality services, and maintaining government-to-government relationships within the spirit of Indian self-determination. The individual employee contributes to the overall mission by performing duties with integrity, fairness and timeliness; always remembering the end product must be a quality service.

The mission of the Office of Law Enforcement Services (OLES) is to uphold the constitutional sovereignty and customs of Tribes, with protecting the rights of all people; to protect life and property; ensure employment suitability and to promote and preserve peace within Indian Country. The OLES develops standards, policy and procedures for Bureau-wide implementation, operates the Indian Police Academy, provides uniformed police and detention services, and monitors Tribal contracted law enforcement programs. Conducts inspections and evaluations of Bureau and Tribal law enforcement programs, conducts internal investigations of misconduct by law enforcement officers, and provides emergency tactical response teams to reservations requiring assistance, or threatened with disruptions or civil disorders. Conducts criminal investigations into criminal violations committed on reservations, involving Federal, State, county, local, and Tribal codes and maintains an automated Criminal Justice Information System. The OLES has law enforcement responsibilities for crimes committed on, or involving, Indian Country. This includes major Federal crimes and State crimes assimilated into the Federal statutes under Title 18 U.S.C. 13, and tribal laws.

The incumbent contributes to this mission by performing his or her assigned job responsibilities in a manner consistent with total quality management principles that promote peak performance and services delivery to our client Indian population. Incumbent is a commissioned law enforcement officer under 25 U.S.C. 2803, and assigned to act on behalf of the Director, OLES.

II. MAJOR DUTIES AND RESPONSIBILITIES

Performs the full range of investigate duties recognized as requiring fully developed law enforcement knowledge and skills. The employee, as a junior member, may be temporarily reassigned to any reservation in the United State to assist with emergencies, major civil disturbances and other criminal investigations.

Duties include the following:

(100%)

-As assigned, investigates, apprehends, arrests and detains persons relating to suspected or alleged violations of Federal, State, tribal, and local laws, such as simple assault, burglary, and auto theft or child sexual abuse. Testifies at hearings and trials in Federal, State, tribal or local court; secures search and arrest warrants through process of affidavit and searches scenes of crimes. Seizes, secures, and maintains proper chain of custody for evidence of crimes.

-Interviews suspects and witnesses, secures and corroborates testimony, manages and directs movement and security of prisoners. Prepares case reports as required which are submitted to a higher level investigator for final disposition.

-Performs surveillance of sites under close watch of other investigators, to obtain evidence, to link suspects and events to probable criminal activity. Develops intelligence data on individuals and organizations known or suspected to be involved in criminal activity. Recruits and cultivates individuals for use as informants or decoys in support of criminal investigations. Performs limited analysis to connect activities, illegal goods, individuals, or other evidence from seemingly unrelated activities. This may be accomplished through surveillance, examination of evidence, interviews, informants, document reviews, or other means.

-Performs undercover assignments, with supervision, developing a supportable cover story, make singular or multiple purchases of evidence or contraband. Total discretion is required when undertaking these operations, not only for success in obtaining evidence and/or convictions, but also for the investigator's safety and survival.

-Participates in investigations of suspected criminal activity related to gaming or gambling.

-Assists as junior team member in the investigation of the more serious and complex crimes of murder, rape, arson, robbery, etc.

### III. EVALUATION FACTORS

#### Factor 1 – Knowledge Required by the Position

Practical knowledge of law enforcement procedures and techniques, including the investigation of crime, Federal Rules of Criminal Procedure, police conduct, courtroom etiquette, rules of evidence, and rules of testimony. Skill in the execution of search and arrest warrants.

Practical knowledge of Federal, state and tribal courts decisions that impact on law enforcement on Indian lands.

Familiarity with Constitutional protection afforded individuals including rules governing search and seizure, arrests and questioning individuals.

Practical knowledge of Federal, state and tribal courts decisions that impact on law enforcement.

Skill in recognizing, collecting and preserving physical evidence and maintaining a chain of custody.

Skill in developing continuing sources of information, relating to a variety of conditions affecting criminal activities, such as routes and means of transportation, economic pressures, population changes, availability and sources of fraudulent documents, and other factors which may have an effect on illegal activity.

Skill in collecting, assembling and presenting pertinent facts both orally and in writing, and the Ability to prepare clear and concise reports.

Familiarity with the methods and patterns of criminal operations and availability and use of modern detection devices and laboratory services.

Skill in the use of firearms.

Knowledge of computer applications and information management resources to track and assist in the conduct of criminal investigations.

#### Factor 2 - Supervisory Controls

Operates under the direct supervision of the Chief of Police on daily assignment and under designee on other assignment. The cases are assigned with information available from preliminary investigations or complaints. The incumbent has responsibility for independently performing routine cases. Completed work is reviewed for accuracy and adequacy for prosecution. More complex investigative matters are performed with closer supervision. The employee is not the only criminal investigator assigned at the duty location.

#### Factor 3 - Guidelines

Guidelines consist of the Department and Bureau manuals, Code of Federal Regulations, Title 18, U.S.C. 1153, Tribal codes, and other Federal statutes. The employee must use judgment and ingenuity in interpreting the intent of the guidelines and in developing applications to specific areas of work.

#### Factor 4 - Complexity

Work involves responsibility for complete investigation of less complex criminal cases (burglary, assault, theft, sexual abuse) and preliminary phases of the more complex cases. Assignments involve the application of law enforcement procedures, quickly and accurately interrogating suspects, taking sworn statements, evaluating information, and deciding on the best course of action as each situation develops. Assignments are complicated by factors such as nature of illegal activity, variety of methods used by lawbreakers, difficulty in establishing facts court decisions affecting operations, and protection of the suspects civil rights.

Factor 5 - Scope and Effect

The incumbent conducts routine and straight forward type investigations. Effective accomplishment of assigned duties has considerable impact on the overall intervention, prevention, and reduction of criminal and unlawful activities throughout the reservation(s). Many investigations and the evidence involved are cross-cultural and involve sovereign governments or nations. Well prepared cases contribute to the efficiency and professionalism of the investigative services and affect the credibility of the overall law enforcement program.

Factor 6 - Personal Contacts

Contacts are with officials from both within and outside the government. These are normally in highly unstructured settings and would include victims, witnesses or suspects, leaders of various Indian tribes, representatives from major Federal law enforcement organizations, Chiefs of Police, Sheriffs, members of Congressional staff, United States Attorneys, intermediate organizations, and private entities and corporations to the extent required complete routine investigations.

Factor 7 - Purpose of Contacts

To detain, control or interrogate suspected violators of the law, or to justify, negotiate or settle matters involving significant or controversial issues, involves active participation in interviews/interrogations, and hearings, which involve problems of considerable importance. Persons contacted often have differing viewpoints or objectives. Suspects interviewed are frequently uncooperative, hostile, afraid, evasive or dangerous. This requires the incumbent to develop a common core of understanding and achieve a satisfactory solution by convincing them, arriving at a compromise, or develop suitable alternatives.

Factor 8 - Physical Demands

Duties are primarily active law enforcement functions. The possibility of physical attack is quite present in field operations. The incumbent must be in, maintain, and periodically demonstrate excellent physical condition. The employee must be certified as proficient in the use of, periodically requalify with, and carry firearms. The incumbent must successfully complete a physical. The employee must successfully complete the basic criminal investigator training program conducted by the Federal Law Enforcement Training Center, or an equivalent course approved by the Commissioner of Indian Affairs.

Factor 9 - Work Environment

Work is primary conducted in an office or field setting. As a law enforcement officer, the incumbent will be exposed to the real risks of physical attack, mob conditions, or similar risks that can result in injury or loss of life. Availability to travel on short notice and under adverse conditions is required.

IV. OTHER SIGNIFICANT FACTORS

The incumbent is required to operate a motor vehicle. A current State driver's license is required. Law enforcement personnel are subject to short notice TDY deployment to meet

nationwide Indian country law enforcement operation/mission requirements. This position may require frequent travel or long periods away from the normal duty station and may include remote or isolated sites. Based on operational necessity, TDY away from duty station in support of other OLES units requires travel by air

This position is subject to Law Enforcement Availability Pay (LEAP). The employee may be required to work other than normal duty hours, which may include evenings, weekends, and/or holidays and/or overtime. The incumbent is subject to wearing a police uniform when necessary or during exigent circumstances within the criminal jurisdiction of Indian country. The incumbent is subject to drug testing and background investigation.

The employee is responsible for keeping self drug-free, for demonstrating knowledge of agency drug abuse policy and procedures. Must be aware and alert to the symptoms and signs of drug abuse and change in behavior; reports appearances of unusual action to responsible official. Encourages peer discussion groups and outreach to available resources; as appropriate, suggests to the supervisor, improvements to the workplace to enhance a drug-free environment, indicating willingness to help bring about positive change.



-WOHEHIV-  
The Morning Star

# NORTHERN CHEYENNE TRIBE

## ADMINISTRATION

P.O. BOX 128  
LAME DEER, MONTANA 59043  
(406) 477-6284  
FAX (406) 477-6210



-WOHEHIV-  
The Morning Star

November 16, 2020

Lenore Nioce  
Special Agent in charge  
2021 4<sup>th</sup> Ave North  
Suite 406 Billings, MT 59101

We received your letter dated November 14, 2020, which responds to our letter dated October 9, 2020 and prior requests for information concerning the Tribe's proposal under the Indian Self-Determination and Education Assistance Act to contract the criminal investigations unit. In your letter, you allege deficiencies with the Tribe's proposal. As indicated in our October 9, 2020, we strongly disagree based on the governing federal regulations. As a result, a declination would be unlawful.

Your November 14 letter further evidences BIA's failure to supply information in a timely manner, as required by applicable federal regulations. For the first time, you supplied information due months ago. Worse, you expected the Tribe to act on the information instantly. When asked today if you could promise to provide timely information, such as within 15 days of a request, you declined, and did not offer any assurances at all.

You reiterated BIA's request for more time to respond to the Tribe's proposal. For the reasons stated above, the Tribe is not providing an extension to the deadline as established by law.

Sincerely,

Rynalea Whiteman Peña

cc: Alonzo Spang, Acting Superintendent, Northern Cheyenne Agency  
Leslie Gourneau, Awarding Official, Rocky Mountain Regional Office  
Northern Cheyenne Tribal Council  
William Walksalong, Tribal Administrator  
John Grinsell, Law Enforcement  
Brian Chestnut, attorney

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

EXHIBIT 7



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

**NOV 17 2020**

Honorable Rynalea Peña  
President, Northern Cheyenne Tribe  
P.O. Box 128  
Lame Deer, Montana 59043

Dear President Peña:

This letter is in response to the Northern Cheyenne Tribe's proposal under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 (ISDEAA), to contract the Division of Drug Enforcement (DDE) and Criminal Investigations (CI) programs from the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS). The BIA OJS received the initial contract proposal on August 19, 2020, and processed it in accordance with the ISDEAA regulation requirements found at 25 C.F.R. § 900. Under 25 U.S.C. § 5321 (a)(2), the BIA OJS had until November 17, 2020 — ninety (90) days — to review the proposal, and approve or decline it.

In a letter to the Northern Cheyenne Tribe (Tribe) dated September 11, 2020, the BIA OJS outlined four (4) deficient items in the Tribe's initial proposal, and identified the changes that the Tribe would need to address for the BIA OJS to approve the proposal. We provided details for each item, offered technical assistance to the Tribe in addressing the issues, and requested a response from the Tribe no later than September 28, 2020. The Tribe submitted a response letter dated October 9, 2020, asking the BIA OJS to provide: budgetary information, Criminal Investigator position description, list of full-time employees, and a list of equipment and supplies available to the Tribe. The BIA OJS provided this information on November 13, 2020. The BIA OJS also reiterated the outstanding issues with the proposal and offered assistance to help the Tribe address the problems.

To date, the Tribe has not provided a revised proposal, or any of the other documentation necessary to overcome the potential grounds for declination raised in the BIA OJS letter of September 11. The BIA OJS notes that, in an effort to avoid declining the Tribe's proposal, the BIA OJS attempted to contact the Tribe and its representatives repeatedly during November 2020 to request an extension of the 90-day deadline, to give the Tribe more time to work with the BIA OJS and address the potential declination grounds. On November 16, 2020, the Tribe informed the BIA OJS that it was not interested in an extension.

For the reasons set forth below, the BIA OJS must therefore decline the Tribe's P.L. 93-638 contract proposal under 25 U.S.C. § 5321 (a)(2), subsections: (A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract; (D) the amount of funds proposed under the